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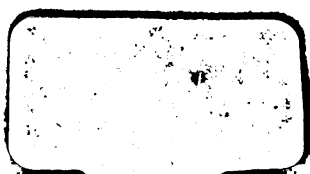
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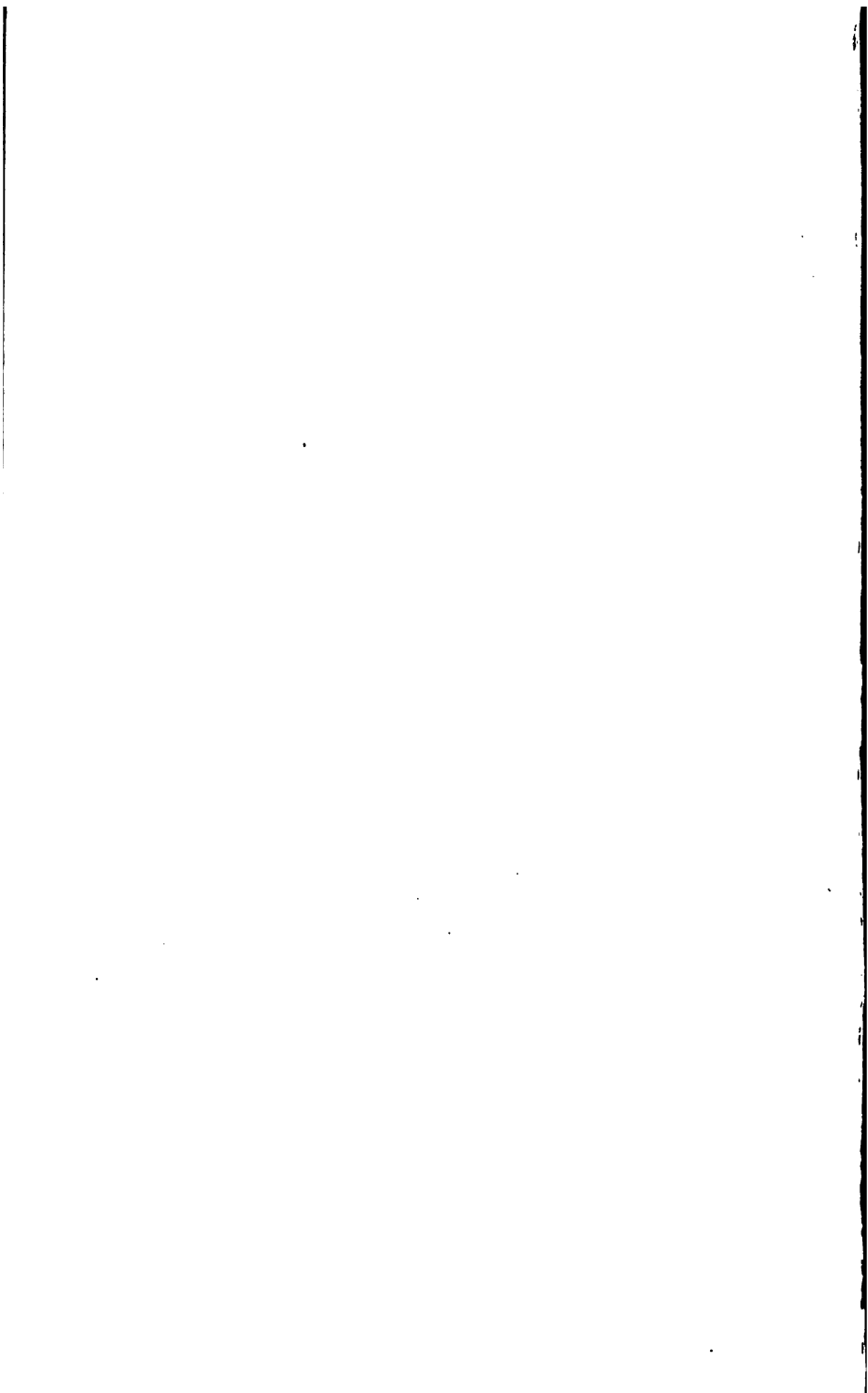
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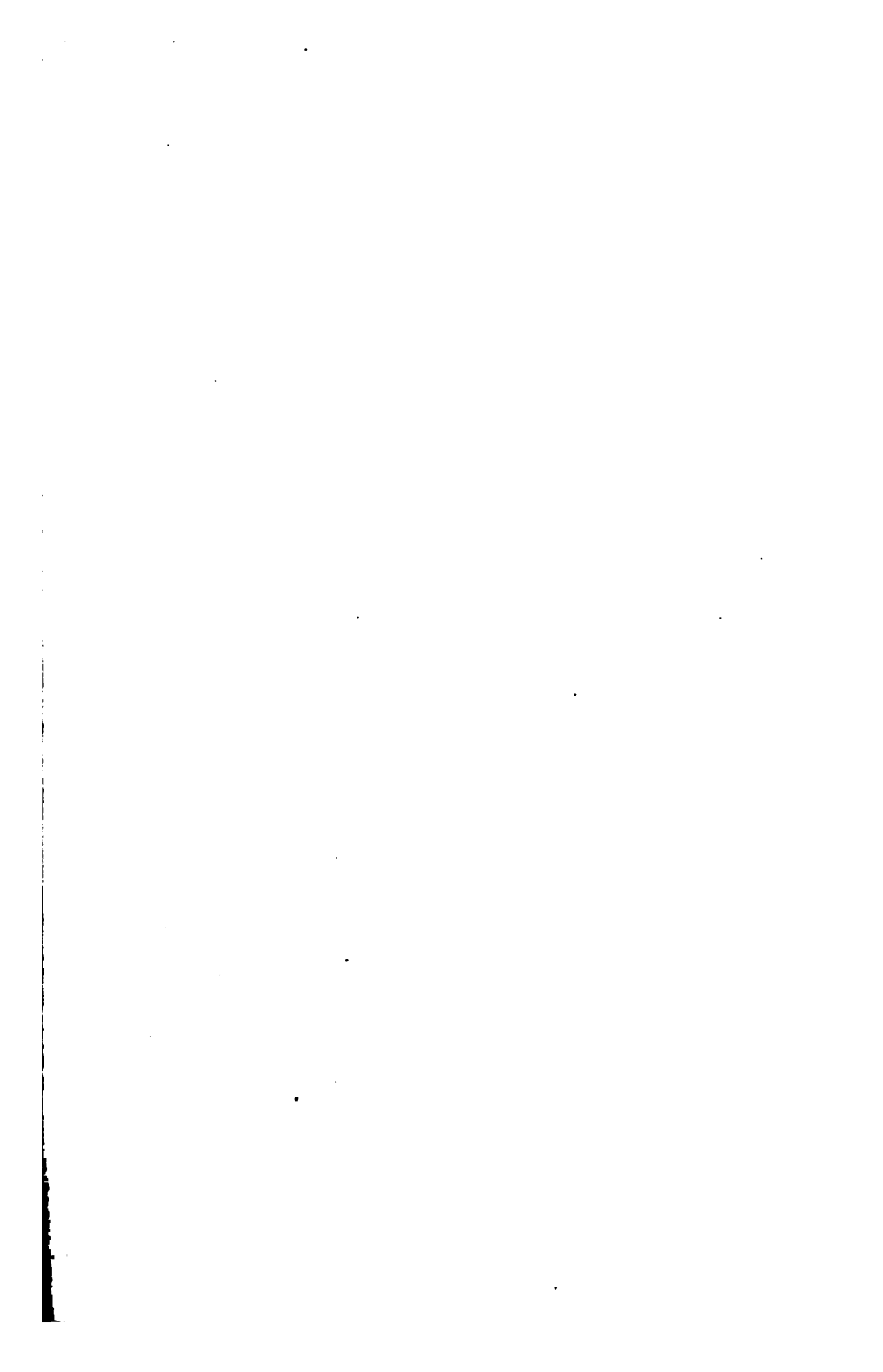


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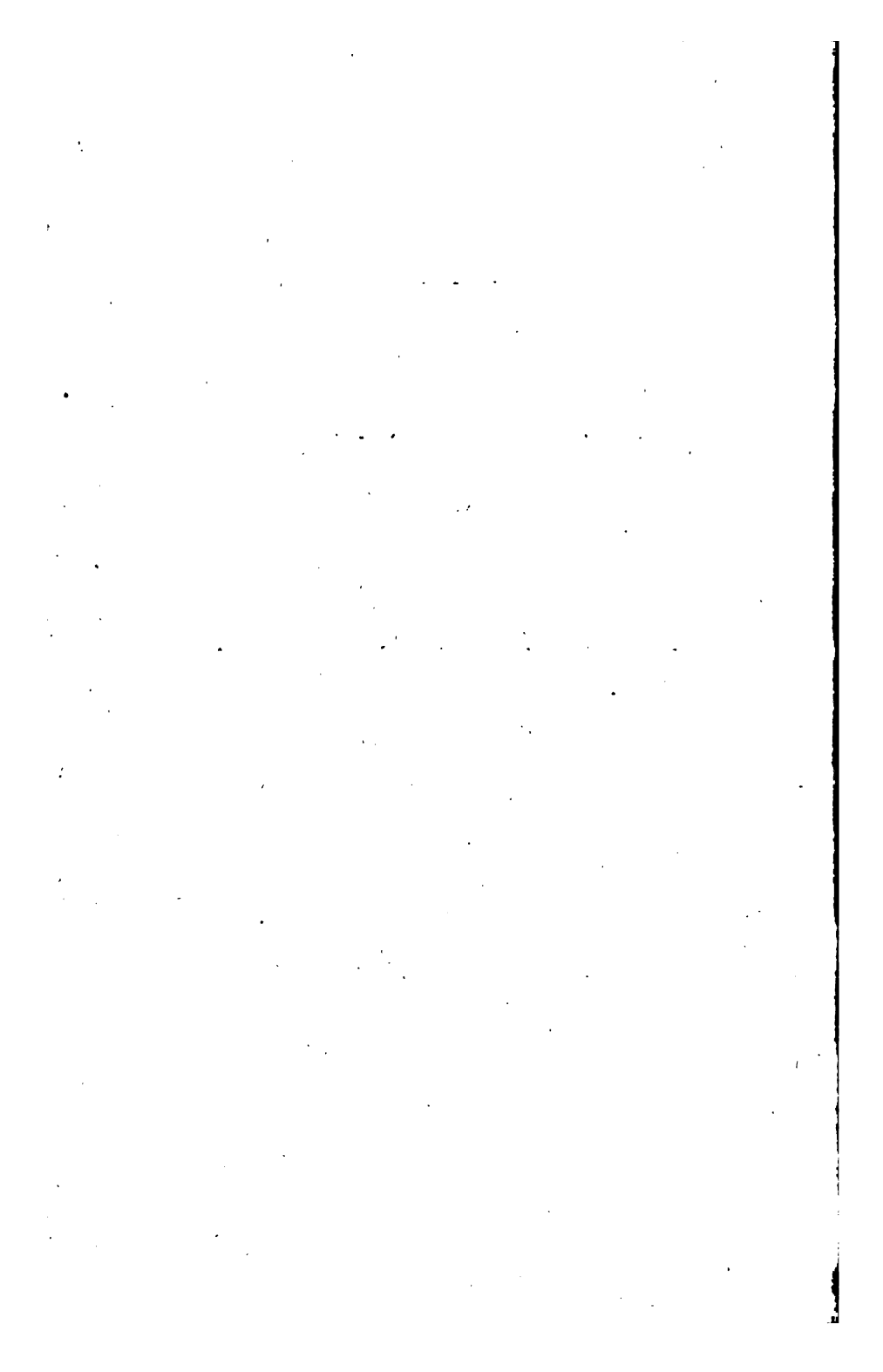
LORD LYTTTELTON'S

H I S T O R Y

O F

K I N G H E N R Y I I.

VOLUME THE THIRD.



THE
H I S T O R Y
OF THE LIFE OF
KING HENRY THE SECOND,
AND OF THE AGE IN WHICH HE LIVED,
IN FIVE BOOKS:

TO WHICH IS PREFIXED,
A History of the Revolutions of England
From the Death of EDWARD the Confessor
To the Birth of HENRY the Second:
BY GEORGE LORD LYTTTELTON.
A NEW EDITION, CORRECTED.
VOLUME THE THIRD.



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ROY WEN



Antiquary Library
THE 1840
HISTORY
OF THE
LIFE
OF
King HENRY the Second.

BOOK II.

IN the spring of the year eleven hundred and sixty-two, Pope Alexander landed on the coast of Provence. He had been driven out of Rome by the faction of Victor, and had taken refuge in Campania, under the protection of William king of Sicily: but, all the roads to that province being infested by the soldiers of the opposite party, his friends and adherents could have no access to him; which made him resolve to depart from thence, and go into France, where he might act as supreme pontiff without molestation. Indeed that kingdom had been long the ordinary refuge of popes in distress; the policy of the French nation inclining their princes to abet all the enemies of the imperial power. As the passage was not safe for Alexander by land, he went by sea, and, touching at Genoa and some other places, arrived at Montpellier, where he proposed to

BOOK II.

Act. Alexand.
ap. Baron.
sub ann. 1162.
Pagi t. iv. sub
eodem anno.
Hugo Pictav.
ap. Duchesne,
t. iv. p. 424.
& seq.
Epist. Freder.
Imperatoris
50. 52, 53, 54.
ap. Duchesne,
t. iv.
Epist. Victoris
ad Ludov. 56,
ibidem.

VOL. III.

B

reside,

BOOK II.

reside, soon after Easter. But a great change had been made in the dispositions of Louis with relation to him by the arts of the queen of France and the earl of Champagne. Being related to Victor, and friends to the emperor, they were desirous, if possible, to draw the king off from the part he had taken with Alexander; and they so far prevailed, that he was persuaded to receive an agent from Victor, with an epistle, in which that pontiff, on the encouragement they had given, ventured to express very confident hopes of his favour. This letter is dated in February, and before Easter Louis sent the earl of Champagne his ambassador extraordinary to the imperial court, upon a proposal made to him, from the emperor Frederick, by the mouth of this earl, that, in order to restore the peace of the church, they should hold another council in the town of Avignon; where, after impartially rehearing the cause, both popes being present, they should either agree to acknowledge one of them, and thereby end the schism, or depose them both, and elect another. I do not believe, that, in making this offer to Louis, the emperor really intended to give up, or bring in question, the election of Victor: but it was a lure by which he tried to induce the king of France to call a new council; hoping that Alexander would refuse to appear before this assembly, with the same contumacy as he had before rejected the citation to the council of Pavia; and that Louis would thereupon
be

be irritated against him, and more favourably disposed to listen to the arguments in favour of Victor. The scheme was well laid, and very skilfully managed by the earl of Champagne. He represented so pathetically, and with such an air of pious zeal, the manifold evils which attended this schism, and how meritorious it would be to restore peace and union to the catholick church, that, with the help of his sister, whose charms very powerfully aided his eloquence, he obtained from Louis a commission to go to the emperor and treat on this matter. Alexander, at his landing, received intelligence from his friends of these transactions, and heard that the earl was set out on his embassy. His surprize and indignation at so sudden a change, which was likely to prove of such ill consequence to him, were equally strong. After the councils of Beauvais and Toulouse, he had never entertained the least apprehensions, that his right to the papacy would again be controverted in France, or that he should be in danger of finding an enemy where he expected a protector. While he was full of uneasiness and disgust, two ecclesiasticks, of whom the highest in dignity was only an abbot, were sent from Louis, to compliment him; in the name of that prince, upon his arrival in France. He received them very coldly: at which the king was so offended, that, in the heat of his anger, he immediately dispatched the bishop of Orleans, to carry a letter to the earl of Champagne, in which he said,

V. auctores
citāt. ut sup.
et Epistolās.

BOOK II.

that he repented his having unadvisedly acknowledged Pope Alexander and rejected Victor. He likewise impowered that minister to consent in his name to call a new council, as Frederick had proposed, and gave him entire liberty to settle all points relating thereunto, with a general assurance of standing to every thing that he should advise. Nothing could be more welcome to the earl than this letter. Having such ample discretionary powers, and so convincing a proof, under the hand of the king, of his beginning to incline to the party of Victor, he soon agreed with the emperor, who then was at Pavia, that he and Louis should meet on the borders of Burgundy, at the town of St. Jean de Laone, between Dijon and Dole, as more convenient to both than Avignon, and should bring with them to that meeting the princes, the nobles, and chief ecclesiasticks of the empire and France, to re-examine the merits of the cause between Alexander and Victor; who should both be present there and plead for themselves. This assembly was to be held on the banks of the Saone, near the above-mentioned town, in the year eleven hundred and fifty-two. A certain number of the most approved knights and ecclesiasticks were to be chosen out of both parties, to judge of the election; and, if they gave sentence in favour of Alexander, the emperor promised to throw himself at his feet; but, if in favour of Victor, the French monarch was bound, by the promise of his minister, to pay the same
mark

mark of veneration to him. And, in case of BOOK II.
 a refusal from the king to stand to that promise, the earl of Champagne pledged himself, by an oath to the emperor, that he would transfer his feudal homage from Louis to him, and hold of him all the fiefs which he then held of that prince. This kind of guarantee was very frequently given, by the feudatories of those days, to the treaties of sovereigns. But it is observable, that, in this agreement, there was no mention made of deposing both the popes, and electing a third, which undoubtedly had been thrown out with no other intention than to induce the king of France to hold the council. The earl now assured himself, that, as the inclinations of that prince were averted from Alexander, he should easily, by his influence over most of the knights, who were to be associated in the judgement of this cause with the ecclesiasticks, procure a sentence for Victor. And, in some letters which the emperor wrote on this subject, he expressed a great confidence, that this council would end in the reception of Victor: nay, in one he affirmed, that Louis had, by his minister, engaged to receive him. There is also an epistle from that pontiff himself, dated the eighth of the kalends of July, by which it appears, that two agents were sent by him to Louis, in the character of nuncios, or legates, about this time. Alexander had therefore more reason to be alarmed than ever before, and found it necessary to use his utmost endeavours to soothe that king, and

V. Epist. 53,
 54. ut supra.

V. Epist. 50.

V. Epist. 55.

BOOK II.

regain his favour. He had still in the French court some powerful friends, particularly one of the brothers of Louis, who had lately been translated from the bishoprick of Beauvais to the metropolitan see of Rheims: yet he could not prevail, by any mediation, to hinder Louis from keeping the promise he had made to a prince of such dignity and power as the emperor, who, he knew, would not bear to be trifled with in a manner injurious to his honour.

V. Hugon.

Pictaven. ap.

Duchefne; et

Act. Alexand.

ap. Baronium

ut suprà.

V. etiam Pagi

ut suprà.

He therefore set out, to go to the place appointed for their meeting. Alexander, who had removed in June from Montpellier to Clermont in Auvergne, went to meet him on his road, at the priory of Souvigny, in the province of Bourbon. There they conferred, and Louis vehemently pressed him to go to the council. He pleaded apprehensions of danger to his person from the power of the emperor: nor would he be satisfied with any securities offered by the king; who, at last growing angry, said it was very surprizing, that one, who was conscious of the justice of his cause, should avoid to be present at hearing the testimonies of his own innocence. Nevertheless Alexander continued inflexible, “Be-
“ cause (says Baronius) it seemed an indignity,
“ and contrary to the decrees of the fathers
“ of the church, that the most holy pontiff,
“ and the supreme see, should submit to be
“ judged by any human authority.”

The earl of Champagne had foreseen, and counted upon this, in the plan which he had formed

formed for the service of Victor. After a conference of two days, Alexander would yield to nothing more than to send some of his cardinals with Louis to the council, not to plead his cause, but only to declare his unquestionable right in the face of the world. There was much dignity in this conduct: but he ran a great risk, and might have been ruined by it, if fortune and the king of England had not been his friends. The latter was used very ill by the king of France in this business. He had agreed with that prince in acknowledging Alexander; whose right had been solemnly judged, and unanimously approved of, in a council held by them both: nor does it appear that the design of rejudging it now, before another council, had been either concerted with Henry, or communicated to him, except by a general notice, given to all the vassals of France, that such a council was summoned. For these reasons he neither intended to go himself thither, nor did he send to it any of his barons or bishops. Alexander knew this, and it greatly encouraged him not to comply with the desire of Louis. When that king arrived at Dijon, the earl of Champagne met him there, and informed him distinctly of what was stipulated in the treaty with the emperor. He expressed great resentment at the earl's having engaged him so far to that prince, denying that he had given him any authority for it. The earl appealed to the bishop of Orleans, who not daring to make a positive answer, he then produced to Louis his

BOOK II.

own letter. Against the strength of this evidence, the king, it seems, had nothing to reply: but, being distressed by the obstinacy of Alexander, and yet unwilling to renounce him (for the discourses of that pontiff had made no little impression upon him), he would have been glad to free himself by disavowing his minister. This necessarily occasioned a good deal of heat and ill temper on either side, which turned very much to Alexander's advantage; for, in proportion as Louis was displeased with the earl, he grew more averse from Victor. When the day which had been fixed for the conference came, the emperor and that pontiff appeared upon the bridge of St. Jean de Laone, which was the boundary that separated the Imperial from the French dominions; but finding neither Louis nor Alexander there, and understanding that the latter had resolved not to come, they presently returned to the emperor's camp, with bitter complaints that the king had broken his faith. After their departure Louis came, and proposed to some deputies, left to confer with him, a prolongation of the time assigned in the convention for holding the council, because the terms of the agreement made in his name had not been properly explained to him till the preceding day, and it would be indecent to conclude so hastily an affair of such moment. The deputies had no power to grant this prolongation; but, the next morning, in the palace of the duke of Burgundy, where he lodged, the earl of Champagne declared to him, that,

as

V. auctores
citat. ut sup.

as the covenant made with the emperor had not BOOK II.
been fulfilled, he thought himself bound, by the oath which he had taken, to transfer his homage, and all the fiefs he held in France, to that prince: but he had obtained from his Imperial Majesty a delay of three weeks, on these conditions, that the king should engage, and give hostages to the emperor, that he would come on the day appointed, and bring with him Alexander; and moreover, that he would hear the cause of both parties, and acquiesce in the judgement of those good men of the empire and of France, to whom the decision of it should be referred, or else deliver himself up at Besancon a prisoner to the emperor.

These were hard terms: but Louis was not in circumstances to refuse or dispute them. For, besides the damage he would have brought on himself and his kingdom, by losing the homage and feudal territories of the earl of Champagne, he was afraid that the emperor should declare war against him, and break into Burgundy, by a sudden attack, which he was very ill able at that time to resist. For he had brought with him many bishops, but few barons or knights; whereas all the nobility of the empire had attended the emperor's summons, and, under the name of a council, composed in reality a most formidable army. The king therefore was constrained to yield to all the conditions which Frederick had prescribed, and gave for his hostages the duke of Burgundy, the earl of Flanders, and the earl of Nevers.

BOOK II. Nevers. He now seemed necessitated, either to concur with the council in acknowledging Victor, if they should decide for that pontiff, which appeared hardly doubtful, or expose his realm to such calamities as might even intimidate the zeal of a bigot. But, before the time came for his meeting the emperor and holding the council, a letter from Alexander revived his spirits. That pontiff, whom he had informed of the treaty he had made, and the obligation he was under of bringing him to the council at the end of three weeks, immediately applied to the archbishop of York and the two Norman bishops of Lisieux and Evreux, whom Henry had sent to attend him, and besought them to employ all their credit with that prince, in his behalf, at this crisis. No peace being yet made, and the behaviour of Louis having been for some months very unfriendly towards him, Henry had not disbanded his army. Alexander implored him to advance with that army, as fast as he could, towards Dijon, and by a timely assistance deliver his liege lord, and the pope he had acknowledged, from being oppressed by the force of the emperor. Instead of listening to the voice of repentment, which might have persuaded him to leave the king of France under the difficulties he had brought on himself, by acting separately from him, and against his opinion, he gladly embraced the occasion of serving that monarch and recovering his affection, while, at the same time, he laid the highest

V. Duchesne,
tom. iv.
Epist. 50.

highest obligation imaginable upon Alexander, **BOOK II,**
 whose cause he had espoused. Accordingly he
 marched with the utmost expedition, taking
 his road through Berry, where Alexander
 then resided. When he was come within the
 distance of two or three days from Dijon, he
 sent forwards some of his servants, to notify
 his approach, and desired that pontiff to dispatch
 them to Louis, with the strongest assurances of
 his readiness to expose himself to all dangers, for
 the honour and service of that monarch. Alex-
 ander immediately sent them to Dijon, with a
 letter to Louis, exhorting him to receive them
 as their message deserved, to thank their master
 for so reasonable and so affectionate an offer,
 and without delay to accept it. They found
 him disposed to follow this advice with most en-
 tire satisfaction. The harsh and offensive usage
 he had received from the emperor made him
 consider that prince as an enemy, who meant
 injuriously to obtrude a false pope upon him
 by force of arms. He therefore pressed the
 king of England, who alone could preserve
 him from the terror of that force, to hasten
 to his succour. While this negotiation was
 on foot, there began to be a famine in the
 emperor's camp; the country about it not fur-
 nishing provisions sufficient for such a number
 of persons during so long a time, and no ma-
 gazines having been formed to supply them, as
 he did not expect that the business upon which
 he brought them thither would have been so
 delayed. This, together with the intelligence
 of

V. Epist. 50.
 ut supra.

V. auctores.
 citat. ut supra.

BOOK II. of Henry's approach, made him take a resolution to return into Germany, without meeting the king of France, or holding the council.

V. Aft. Alex.
ap. Baronium.

We are told that, in order to vindicate his intended departure, he sent his chancellor, the archbishop of Cologne, to say for him to Louis, that it belonged to no prelates, but those of the holy Roman empire, to judge of the election of a bishop of Rome; and consequently the king and clergy of France had only a right to be present and hear their decision. Or (as

V. Hug.
Pictav. apud
Duchefne.

another contemporary author relates it) the archbishop denied, that the emperor had ever obliged himself to admit any partners in judging a cause which concerned the church of Rome; that see being wholly under his own jurisdiction. But whatever claim, either the emperor, or the prelates of the empire, might have to an exclusive authority in this matter, Frederick himself had given it up, by proposing this council. For he and the empire had before decided the question in favour of Victor; nor was there any occasion to desire the king and prelates of France to assemble a council upon the same dispute, if they had properly no cognisance of it. Even in the letters that the emperor wrote, to invite foreign bishops to the council of Pavia, he had expressed his intention,

V. Epist.
Fred. ap.
Radevic.

that it should be declared in his presence, by their just judgment, which of the two popes had a right to the government of the universal church. If therefore he now claimed an exclusive prerogative to judge for himself, or by the prelates

lates of the empire alone, upon the election of BOOK II.
a bishop of Rome, he acted in contradiction to all his former conduct, as well as to the engagements he had taken with Louis, through the intervention of his friend, the earl of Champagne. And one can hardly believe that so wise a prince would have chosen to incur the reproach of such inconsistency, when he had so good a reason to excuse his sudden departure as the famine in his camp. There is a strong probability that he quitted the neighbourhood of St. Jean de Laone before the day appointed for holding the council; for, otherwise, he would have had a still better plea, namely, the absence of Alexander, who remained in the monastery of Bourgdieu in Berry, notwithstanding the assurances which Louis had given, that he would bring him to appear before the council: and in that case the king, not the emperor, would have broken the articles of the compact between them; nor could the former have recovered his hostages, without yielding up his own person in their stead, or joining with the emperor to condemn and depose Alexander, on account of his non-appearance. Perhaps indeed that pontiff might have ventured to come under the guard of King Henry: but, as it was contrary to his former declarations, it is much more probable that he would have persisted, in not submitting himself to the judicature of this assembly. Certain it is, that the retreat of Frederick and his army extricated both his holiness and the king of France from such
difficul-

BOOK H. difficulties as they could hardly have surmounted; and that retreat was no less owing to the king of England's approach, than to the want of provisions in the emperor's camp. Henry, finding that the first news of his being on his march had effectually answered his purpose, advanced no further than Bourgdieu, where Alexander, on whose head he had fixed the triple crown, received him with the acknowledgements due to a service of such mighty importance. Nor was Louis less sensible of his own obligation to him in this affair. He felt it so strongly, that it effaced from his mind all the impressions which had been made against that prince by the intrigues of his enemies. They both had soon afterwards a meeting with Alexander at Touci upon the Loire, where the two kings, walking afoot on each side of his horse, held the reins of his bridle, and led him to a pavilion which was prepared to receive them; *A spectacle (says Baronius) to God, angels, and men, such as had not yet been seen in the world!* It was indeed astonishing: but the emperor himself, by the bigotry of the times, had been compelled to submit to a like humiliation. For, at the ceremony of his first reception in Rome, he held the stirrup of Adrian the Fourth, much against his own will, after a long and very warm dispute with that pontiff. It is said that, having held it on the wrong side of the horse, and being admonished of his error by the pope, he made answer, *that his ignorance must be excused, as he had never before*

Chron.
Norm.
p. 997.
Baronii
Annal. sub
ann. 1162.
Histoire
d'Allemagne,
tom. v. sub
eodem anno.

before done the office of a groom. When the **BOOK II.** veneration for the papacy was carried so high, and such a kind of idolatry was paid to the persons of the bishops of Rome, even by the greatest princes, a story, which Baronius has related in his annals under this year, will not seem incredible. He says, that, when Alexander made his first entrance into Montpellier, among the Christian nobility that attended him on his way, in a solemn procession, there was a Saracen prince, or emir, who reverently came up to him, and kissed his feet, he being on horseback; then *knelt down before him, and bowing his head adored him as THE HOLY AND GOOD GOD OF THE CHRISTIANS.* He does not tell us that Alexander in any manner reproved him for his blasphemous error; but, on the contrary, takes notice, that he shewed him extraordinary kindness; and adds, that all who saw it were filled with great admiration, and applied to the pope the words of the prophet David, *All the kings of the earth shall worship him, and all nations shall serve him.* Thus, in that age of ignorance and credulity, did superstition even deify the bishop of Rome! but it is still a more shocking impiety, that a learned cardinal, who lived in the seventeenth century, should relate such a fact without expressing the least disapprobation of it; nay, rather with an air of complacency and applause.

During this conference, Alexander acted as mediator between Louis and Henry, and ob-
Chron. Norm. P. 998.
tained

BOOK II. tained a peace for the latter, without the restitution of the forts on the river Epte, or any other sacrifices made by him to Louis. Gratitude and good humour had entirely expelled from the mind of this monarch all those sentiments of resentment, or political jealousy, which had engaged him, with more heat, than reason or discretion, in the late war. He now saw the king of England in no other light, than as the deliverer of him and the church from a state of captivity: nor was he able to resist the intercessions of one, who stood, as he imagined, in the place of St. Peter. It was also a great advantage to Henry's affairs in France, that, by means of the late transactions, the earl of Champagne had lost his credit with Louis. And probably Henry might have gained a greater ascendant than ever over the counsels of that king, if he had never quarrelled with the church and Becket. But it will appear by the sequel of this history, that no sense of obligation, nor ties of friendship, could restrain or mitigate the fury of religious zeal in a bigot so warm as Louis, who was transported, by the hatred arising from thence, even to acts of hostility the most repugnant to morality and natural justice.

Chron. Norm.
ut suprà.

About this time, Henry received an extraordinary embassy from the Mahometan king of Valencia and Murcia, with a most splendid present of gold, silk, horses, camels, and other valuable commodities, the produce of Africk or the East. I find, in some of the Spanish historians,

rians, that Raymond, earl of Barcelona, and regent of Arragon, assisted this prince against the Miramolin, or chief of the Moors named Almohades, whose arms he had drawn upon himself by refusing to pay him the obedience to which the other Mahometans in Spain had submitted. It was the interest of the Christians to support these lesser princes against that great potentate; and therefore Raymond acted wisely in making this league. As his dominions were contiguous to the dutchy of Aquitaine, the king of Valencia might hope to obtain some advantage, by connecting himself also in friendship with Henry, whose alliance, together with that of the Arragonefe and the Catalans, would add much to his strength in the very difficult war he had to sustain. This, I presume, was the real motive of this expensive embassy; to which the English monarch made a proper and becoming return, by sending him presents of still a greater value, with assurances of a reciprocal regard and esteem: but we are not informed that he gave him either money or troops; nor, indeed, that the embassadors applied to him directly for any such assistance; the intention of their master being only to lay a foundation of amity, on which he might afterwards ground a request of that nature. It is not unlikely, that, in consequence of this intercourse, a trade might be settled between the Moors of Valencia and Murcia and Henry's French subjects, especially those of Aquitaine: for the

BOOK II. wisdom of that prince would naturally teach him, that a treaty of commerce, which might open to his people any new source of wealth, was equivalent to a conquest. He gained at least this benefit, from the advances made to him by the king of Valencia, that it added to the veneration his subjects had for him, to see the prince of a remote and infidel nation thus solicit his friendship. Nothing more affects the minds of the people than a novelty of this kind: and whatever raises the reputation of a king increases his power.

Gerv. Chron. During the course of these various affairs in
sub ann. 1151. France, Henry had lost a very affectionate friend and servant in England. Theobald, the old archbishop of Canterbury, died in April, eleven hundred and sixty-one. We have a letter, which he sent the year before to that monarch, and wherein he most pathetically exhorts and implores him to return to his kingdom, which wanted and earnestly desired his presence. “ May it please your *majesty* (says the good “ prelate) to return to *your own peculiar people;*” by which expression he intended to insinuate to him, that the people of England, who had no other sovereign, were better entitled to his affection and care, than the Normans or any of his subjects in France. And, after having laid before him other reasons of importance, which might induce him not to stay any longer abroad, he mentions his own desire to see him again before he died. The expressions he makes
 use

V. Johan.
Sariseb. epist.
 63.

use of are very affecting. " My flesh (says he) **BOOK II.**
" is consumed, and my soul is on the point of
" departing from my body ; but it still lingers
" in hope and desire of your coming. It re-
" fuses to hear the call of nature ; nor will it suf-
" fer mine eyes to close, till they have had the
" satisfaction of beholding your face." Henry
had a heart most tenderly sensible to the kind-
ness of his friends, and did not think it beneath
the dignity of a king to love a faithful servant.
Nor was he ever unmindful of the duty he
owed to his subjects in England : but his new
quarrel with Louis, and the incidents that
arose with relation to the schism between
Alexander and Victor, confined him in France
against his will ; so that, unhappily, the
good archbishop died without having seen
him.

The see of Canterbury being thus vacant, it
was a point of the utmost consequence for the
king to consider, whom he should raise to that
dignity ; as he had now a purpose of restrain-
ing the licentiousness of his clergy, and bring-
ing them under the coercion of the civil autho-
rity, from which the weakness of government,
and the encroachments of the papacy, during
the reign of his predecessor, had set them free.
To render this arduous work less difficult to
him, he wanted a primate, upon whose prin-
ciples and affection he might depend ; who was
no bigot ; who perfectly understood the rights
of the state, and would dare to support him in
asserting them against the immoderate preten-

BOOK II.

fions of Rome. He thought, that in Becket he saw all these qualities, and, perhaps, only in him: it being no easy matter to find such a person among his clergy. Him therefore he resolved to advance to that dignity at this critical time. Becket himself much desired it, if we may believe Gilbert Foliot, bishop of London, who in a letter which he wrote to him afterwards on another occasion, affirms, that “his eyes were watchfully fixed upon the archbishoprick before Theobald died, and that he did all he could to secure it to himself on that event.” As this prelate then, possessed the confidence of the king, he might be assured of this fact from the mouth of that prince; and without such information, or rather very strong evidence, it is not probable that he would have ventured to charge Becket with it in such positive terms. Some friends of the latter, in their accounts of his life, assert indeed, that, when Henry first acquainted him with his intention to make him archbishop, he gave that monarch a fair warning, “that it would certainly produce a quarrel between them; because his conscience would not allow him to suffer many things, which he knew the king would require, and even allow ready presumed to do, in ecclesiastical matters.” They add, that, as he foresaw, that, by accepting this offer, he should lose the favour, either of God, or of the king, he would fain have refused it, and was with great difficulty prevailed upon to accept it by the pope’s

V. Epist. S.
Thom. in Co-
dice Cotton.
Claudius, B.
See the Ap-
pendix to the
next book.

Heribertus
in vitâ Bec-
ket. Joan.
Sarisber. in
vitâ Becket.
et in Quadri-
logo.

pope's legate. But that any part of the apology for him is true I greatly doubt; as it stands contradicted by the affirmation of Foliot, which in this particular is an evidence of far greater credit than the word of Becket himself; and as it ill agrees with the methods which were undeniably taken to procure his election; methods he must have known to be very inconsistent with the canons of the church and what was then called its freedom. Nay, even those biographers themselves acknowledge, that one reason, which induced Henry to promote him to Canterbury, was, *because he hoped, that, by his means, he should manage ecclesiastical, as well as secular affairs, to his own satisfaction.* V. Johan. in Quadrilogo. Wilhelmus in vita S. T. præfix. epist. Indeed no other rational motive can be found. For, why should not that prince, who always considered propriety and decency in bestowing preferments, have chosen one of his bishops to be placed at the head of the English church, rather than a man not yet in priests orders, a courtier, and a soldier? Nothing could incline him to make so extraordinary and so exceptionable a choice, which he might be sure would give offence to the body of the clergy, and scandalize many even of the laity in his kingdom, but a firm confidence, that he should be most usefully assisted by Becket in the important reformation he meant to undertake: Nor is it credible, that he should not have revealed his intentions, concerning that affair, to a favourite minister, whom he was accustomed to trust, without reserve, in his most secret

BOOK II.

counsels. But if such a declaration had been made by that minister, as the above-mentioned historians would have us believe, can we suppose that a king so prudent as Henry would have forced him into a station, in which he certainly would do him no service, but might have it in his power to be exceedingly troublesome to him? It was, undoubtedly, by quite a different language that the usual sagacity of this prince was deceived. Nor indeed could the most jealous and penetrating eye have discovered in Becket, before he was elected archbishop of Canterbury, any marks of an enthusiastick or bigoted zeal; but several indications of a contrary temper, and different principles, had appeared in his conduct. I shall mention only two, which are very remarkable. In the third year of this reign, a cause had been tried before the king concerning the exemption of Battle-abbey in Suffex from the jurisdiction of the bishop of Chichester; upon which occasion that prelate, to invalidate the charter of William the Conqueror, whereby the exemption in question had been granted, asserted that no layman, nor even a king, had power to give any ecclesiastical dignities or privileges to a church; and that none, conferred in such a manner, could ever be valid, without the allowance and confirmation of the pope. Henry reprimanded him, with a great deal of spirit, for advancing this doctrine, saying, that “*out* of regard to the papal authority, *which was derived from the mere concessions of men*, he “ argued

V. Concil.
Magnæ Brit.
t. ii. p. 431.
sub ann.
1157.

“ argued against the royal authority, which
 “ was granted by God, in violation of his
 “ oath of allegiance; for which offence he (the
 “ king) expected and required him to be ready
 “ to answer according to law; and called on
 “ the whole assembly to do justice against him,
 “ as one who endeavoured to deprive his sove-
 “ reign of the ancient dignities and rights of
 “ his crown.” This speech, which it well
 became an English monarch to make, but
 which contained propositions that Rome would
 have condemned as damnable heresies, Becket
 seconded and supported: whereupon the bishop
 of Chichester was forced to recant, and ask par-
 don of the king. In the conclusion, the royal
 prerogative, and the exemption grounded upon
 it, were confirmed by the whole council, with
 Becket’s concurrence.

Another strong instance, how little of the
 churchman had appeared in the chancellor, is
 the offence that he gave to the whole clergy of
 England in the business of the scutage for the
 war of Toulouse. We are informed, by the
 above-mentioned letter of the bishop of London,
 that they complained much of that burthen, and
 imputed its having been laid so heavy upon
 them to Becket’s advice. Not that, in reality,
 they had cause to complain: but the doctrines
 of Rome had taught them to regard all secular
 services as inconsistent with their spiritual
 functions; and they wanted an exemption from
 all publick charges, especially those of a mili-
 tary nature, not only for themselves, but for
 their

BOOK II. their tenants and vassals. These pretensions had gained ground during the reign of king Stephen, and every zealot for ecclesiastical liberty continued to maintain them. Even the best of them (for such we may reckon the bishop of London) spoke of this imposition *as a wound to the vitals of the church*. Yet Becket did not scruple to give *that wound*, however careful he was afterwards of her safety. It is very observable, that even his friend the archbishop of Canterbury, in one of the letters he wrote to Henry a little before he died, declares to that prince, “ that, being sensible “ his end was now approaching, he had vowed to God, among other things, *to prohibit, under pain of excommunication, the execution of the second aid which his brother the archdeacon had imposed on the church.*” This *second aid*, I presume, was only a second payment of the scutage assessed on the clergy for the war of Toulouse. *The archdeacon who imposed it* was no other than Becket; and it would have been an extraordinary circumstance in the history of that prelate, if he had been excommunicated on this account, and afterwards fainted for having opposed the constitutions of Clarendon. But the old archbishop died; and no regard was paid to his opinion of this matter, either by the king or the chancellor. Perhaps indeed the letter was never sent; for it has neither date, nor superscription, except the word *Cantuariensis*: yet it evidently shews the sense which the English

V. Epistol.
prædict.

V. Joan.
Sarisb. Epist.
49.

English clergy had of this imposition, and also that it was laid upon them by Becket's advice. After such testimonies of his zeal to maintain the royal prerogatives, against the exorbitant claims of Rome and the church, it is no wonder that Henry should believe him no bigot. And that opinion was, unquestionably, the principal cause of this unhappy choice, which proved the source of great disquiet to that monarch and his kingdom. He had lately given a new and very high mark of his esteem to Becket, by entrusting him with the education of the young prince his eldest son; and he intended that he should still retain this charge, and the great office of chancellor, together with the archbishoprick: so that all power, civil and ecclesiastical, present and future, seemed to be put into the hands of one man. This necessarily drew upon him a heavy load of envy, which, with the unsuitableness of his general character, and manner of living, to such an eminent ecclesiastical dignity, threw difficulties in his way, that nothing but the force of the royal authority could remove. It appears from an epistle sent to him afterwards by all the bishops and clergy of England, that, as far as they durst, they signified, at this time, their disapprobation of the king's desire to promote him to Canterbury; and that, in spite of the popularity which he had so much affected, the whole nation cried out against it. We are also assured by the same evidence, which

BOOK II.

Heribertus in
vitâ Becket.V. Epist.
S. Thom.
Cantuarien.
Edit.
Bruxelles,
e Cod. Vatic.
Epist. 126. li.

BOOK II. which can hardly be rejected, that Matilda did her utmost to dissuade her son from it. But, though, upon other occasions, Henry paid her the greatest respect, he determined to act in this matter by his own judgement; and having taken his part, as he believed, on good reasons, his passions were heated by the opposition he met with, and his affection for his favourite concurred with the pride of royal dignity to make him adhere to his purpose. Nor was Becket himself less eager than his master in the affair, if we may believe the testimony of the bishop of London, who says, in the letter I have quoted before, that, as soon as the death of archbishop Theobald was known to that minister, he *hastened* to England, in order to procure the vacant see for himself. Yet he found such an unwillingness in the electors, that, notwithstanding all his power, and the address he always shewed in the conduct of business, he was not elected till above a twelvemonth after his predecessor's decease. Henry at last growing impatient of so long a delay sent over from Normandy his justiciary, Richard de Lucy, to bear his royal mandate to all the monks of Canterbury and suffragan bishops, that, without further deliberation, they should immediately elect his chancellor Becket to be their archbishop. So great a minister, who brought such an order from a king, whom no person in his realm had ever disobeyed, except the Lord Mortimer, whose rebellion

Gervase sub
ann. 1161.
Codex Cot-
tonian. epist.
162. ut supra.

bellion had ended so disgracefully to himself, BOOK II.
 could hardly be resisted by ecclesiasticks. Yet the bishop of London had the courage to resist him; and (if we may believe what he himself avers in his letter to Becket) did not give way, *till banishment and proscription had been denounced against him and all his relations by the justiciary of the kingdom.* The same threats, he tells us, were used to the other electors. All were made to understand, that, if they refused to comply, they would be deemed *the king's enemies*, and treated, as such, with the utmost rigour. “The sword
 “of the king (says the above-mentioned pre-
 “late to Becket) was in your hand, ready to
 “turn its edge against any upon whom you
 “should frown; *that sword which you had be-
 “fore plunged into the bowels of your holy mother,
 “the church.*” He explains these last words to mean the wound which had been given to the privileges of the church, by the imposition which the chancellor had laid on the clergy for the war of Toulouse; and concludes the severe remonstrances upon the irregularity of his election with the following words, *That if* (as he himself had asserted in a letter to which this was an answer) *the liberty of the church was the life of the church, he then had left her lifeless.* It was indeed a more violent and arbitrary proceeding than any that had hitherto been known in this reign. For though Henry, ever since his accession to the crown, had maintained the indisputable pre-
 rogative

BOOK II.

rogative of it, not to let any archbishop or bishop be chosen without his recommendation, which the chapters and others concerned had always obeyed; yet still some appearance of a free election was kept: the electors were influenced rather than compelled; or at least the compulsion, which they were really under, was decently hidden. But in this instance all the terrors of power were employed without disguise, and even beyond the bounds of justice. How very desirous Henry was to carry this point appears most strongly from his words to Richard de Lucy, before he sent him to England. He said to him, "Richard, if I were now lying dead, would you not endeavour to raise my eldest son to the throne?" And upon his answering that he would, to the utmost of his power, the king replied: *Endeavour equally to raise my chancellor Becket to the see of Canterbury.* Every objection to his promotion being thus overcome, the prior and monks of Canterbury, with the suffragan bishops, in presence of the young prince Henry, of Richard de Lucy, and many of the nobles assembled at Westminster, on the third of June, in the year eleven hundred and sixty-two, the forty-fourth of Becket's age, elected that minister into the see of Canterbury: nor did any man dare to oppose it, or express any dislike of what had been done, except Gilbert Foliot, then bishop of Hereford, and presently afterwards translated to London, who ventured

Joan. in Qua-
drilogo.

Gerv. & Di-
ceto sub ann.
1162.

tured to say, when the ceremony was over, **BOOK II.**
that the king had worked a miracle, in having, Fitz-Stephen
in vitâ Becket.
Heribert in
vitâ Becket.
that day, turned a layman and a soldier into
an archbishop. After the election, the prince,
 by a commission from his father, gave the
 royal assent to it; and then Becket removed
 from London to Canterbury, where he was
 consecrated by the bishop of Winchester; the
 see of London, to which properly that office
 belonged, being vacant. Not only the pre-
 lates and clergy of the province, but most of
 the nobility, and the young prince himself,
 attended the ceremony, paying these honours
 to the *favourite* as much as to the *primate*.
 It is remarkable, that he had taken priests
 orders only one day before his consecration.

Prince Henry had been sent to England by
 his father, that the barons of the realm might
 do homage to him as heir apparent. They per- Chron. Norm.
p. 999.
Diceto. Imag.
hist. sub ann.
1162. p. 533
 formed that ceremony before the election of
 Becket, who was the first that swore fealty to
 him, *saving the faith which he owed to the king*
his father.

About the end of January, in the year eleven-
 hundred and sixty-three, that monarch, dis-
 engaged from his affairs on the continent, re-
 turned into England. The peace of South-
 Wales had been greatly disturbed in his absence,
 by the dissatisfaction and courage of Rhees ap See Dr. Pow-
el's Welsh
Chron. from
p. 208. to
221.
 Gryffyth. After that prince had submitted
 and laid down his arms, in the year eleven-
 hundred and fifty-seven, he was much dis-
 pleased that the territories, which had been
 assigned

BOOK II.

assigned to him by Henry, did not lie all together, as he had been promised that they should, in the country round about Dynevowr and Carmarthen; but were in different districts, and intermingled with the lands of other lords. The giving them in that manner would have been, doubtless, good policy, if it could be so in a king to break his word. But Henry, having thus violated the treaty he had made for the pacification of Wales, did in effect rekindle that flame of war which he had desired to extinguish by prudent concessions. Rhees ap Gryffyth had never been a friend to the English: but this rendered him more their enemy, than if they had continued an open war against him. Yet he suppressed his resentment till he received a further provocation. Walter de Clifford, who had the government of a castle in Cardiganshire under Roger de Clare, earl of Pembroke, having, on some pretence, made incursions into his lands in that county, he sent a complaint to the king, who returned him only fair words, without redress; at which losing all patience, he boldly took up arms, and, with the assistance of his nephew Eneon, a young man of great valour, demolished all the castles of the English in Cardiganshire, which had lately been rebuilt by Roger de Clare, and subdued the whole province, before any sufficient force could be brought to oppose him. This was an act most offensive to the king, who had confirmed to the earl of Pembroke the grant of this

coun-

country, which the father of that lord had obtained from Henry the First, and which having been lost in the reign of Stephen was, by the late peace, restored to the family: yet, as he then was engaged abroad in affairs of great moment, and could not be insensible that Rhees had cause to complain of ill usage, he permitted him to enjoy the county of Cardigan, as a compensation for what he had an equitable right to in the province of Carmarthen. But either that prince was apprehensive, that this indulgence was no more than a temporary favour, which he should be deprived of when the king had leisure to chastise him; or his ambition was not satisfied with so small a part of the kingdom that had belonged to his ancestors. For, while Henry was taken up in the war of Toulouse, he led his forces into Pembrokeshire; destroyed all the castles lately fortified there by the English, and then laid siege to the royal town of Carmarthen. But Reginald, earl of Cornwall, who in the Welsh chronicle is called earl of Bristol; Roger, earl of Pembroke; and some other English lords, assisted by the sons of Owen Gwyneth, and by his brother Cadwallader; came against him with a great army of English and Welsh; at whose approach he was obliged to raise the siege, and retire to the mountains of Brecknock. They did not pursue him thither; but contented themselves with building a castle on the borders, to stop his incursions, repairing most of those

BOOK II. those which he had demolished in Pembrokehire, and restoring to the earl of Pembroke the province of Cardigan.

About the beginning of the following year, eleven hundred and sixty, died Madoc ap Meredyth, prince of Powis-land. The Welsh chronicle says of him; "that he had been
 "ever a friend to the king of England, and
 "was one that feared God and relieved the
 "poor." Henry indeed had great cause to lament his death: for, by his faithful and loyal services, he not only had secured the marches of England, but had been very instrumental in bringing the other Welsh princes to submit to that power, which he, who was descended from the ancient monarchs of Wales, was not ashamed to obey. Gervase of Canterbury, a contemporary author, says, that Henry, in the war against the earl of Toulouse, was served by one of the kings of Wales. If any of them did attend him there, it certainly was this prince, to whom that historian might still continue the title which his ancestors had enjoyed. After his death, Powis-land, which he had held almost entire, was split into several portions by the Welsh gavel-kind, and never again was united under one prince. His immediate heirs were two sons, the issue of his marriage with a daughter of Gryffyth ap Conan, and three illegitimate, who shared equally with the former in the division of the whole paternal inheritance. But his nephew Owen, the son of Gryffyth ap Mere-

V. Chr. Gerv.
 sub ann. 1159.

Meredyth, stiled in the Welsh chronicle Owen Cyveliock, had a district called by that name, which contained near one half of Powis-land, and had been held, during his infancy, by Madoc, as his guardian. The sovereignty of England was acknowledged by all these princes; and therefore, when the king returned from France, he did not think it necessary to visit those parts; but gave all his attention to the affairs of South-Wales, and the war made against him there by Rhees ap Gryffyth, who, remaining unsubdued in the mountains of Brecknock, continually infested the neighbouring countries. That prince had been much encouraged, or had artfully contrived to encourage his people, by prophecies published in Wales and England, pretending to foretel that Henry would never return to his kingdom. His arrival indeed put an end to that delusion, but not to the obstinacy of their revolt, till he raised a great army, and advanced with it himself to Pencadyr near Brecknock, where Rhees, being unsupported by the other Welsh princes, and finding himself unable to resist so formidable a power, came to him and made his submissions; upon which he was pardoned, and, renewing his homage, received the whole Cantreff Mawr, a large part of Carmarthen-shire, in which was Dynevowr, the royal seat of his ancestors, kings of South-Wales, agreeably to the articles of the peace he had made in the year eleven hundred and fifty-

V. Diceto
Imag. hist. sub
ann. 1163.

Welsh Chron;
sub ann. 1163.

BOOK II. seven. But Cardiganshire was left in the hands of the earl of Pembroke. Henry, having thus restored the tranquillity of South-Wales, without any bloodshed, returned from thence into England, and held his court in great pomp at his favourite palace of Woodstock; where Malcolm king of Scotland, Owen Gwyneth, and Rhees ap Gryffyth, with all the other inferior princes and chief lords of Wales, attended his summons, and paid their homage, both to him, and his eldest son as heir to his kingdom.

Diceto Imag.
hist. sub. ann.
1163.

Some monarchs, great in war, or while they are struggling with the storms of adversity, sink, in tranquillity, into an effeminate and negligent indolence, which seems to unnerve all the vigour of their minds. But Henry Plantagenet was not one of these. Peace did not lay his virtues asleep: it only gave them a different exercise. His courage and magnanimity were then exerted in correcting the abuses of government, and bringing the state of the whole kingdom as near to perfection as the times would permit. How far he had gone before in this arduous undertaking, the reader has seen. But a wise prince will never think of endeavouring to reform all evils at once; much less such as are covered under respectable names. Where he has not only faction, but prejudice, to contend with, he will proceed with great caution, wait for proper seasons, and be sure, by other trials, that his authority is too strong to be easily baffled.

Nay,

Nay, he will be patient till he has brought the **BOOK II.** voice of the publick to declare itself loudly in favour of the reformation he meditates. Henry did thus with regard to the independency on the civil power, which in Stephen's reign the English clergy had arrogated to themselves, and still continued to claim. But, before I enter upon this subject, I think it will be proper to give some account of him in those parts of his character which make us acquainted with *the man* as well as *the king*. I shall also delineate a short sketch of the customs and manners of the nation, and endeavour to supply whatsoever is wanting for the information of the reader in the civil and political state of the kingdom.

The person of Henry was masculine and robust, excelling rather in strength of limbs and dignity of aspect, than in delicate or exact proportions of beauty. Yet his features were good; and, when his mind was serene, there was in his eyes a great sweetness; but, when he was angry, they seemed to sparkle with fire, and dart out flashes of lightning, says Peter of Blois, in a description he gives of him to the archbishop of Palermo. This passionate temper, which shewed itself in his countenance by such visible marks, was his greatest imperfection; for, upon any sudden provocation, he could not command the first motions of his rage, though at other times he possessed an extraordinary degree of prudence and judgment. Nevertheless this infirmity never be-

V. Petri Ble-
sens. epist.
66. inter
opera ejus,
et in Appen-
dice.

BOOK II.

trayed him into furious or cruel actions; but only broke out in words or gestures: nor did his anger last long; and, when he was cool, his disposition and behaviour were gentle and humane. He was tenderly compassionate to all persons in distress; and his good œconomy seemed to be chiefly employed in providing an ample fund for his charity and bounty. Besides what he laid out in acts of munificence occasionally done, some of which were the greatest we read of in our history, he assigned the tenth part of the provisions of his household to be constantly given in daily alms to the poor. His treasures were ever open to all men of merit; but he was particularly liberal in his presents to strangers, who came to visit his court; as many did from all the nations in Europe, drawn by his fame, which was every where high and illustrious. *Gi-*
V. G. Camb. raldus Cambrensis, a writer of considerable
Hibern. ex- note in those days, speaks of him with some
pugnat. c. 45. degree of censure on this account; as if his having been so lavish to foreigners was a detriment to his servants and domestick attendants, who were better entitled to his gifts. But very little regard is due to that author in what he says against Henry, towards whom he was sowered, not only by his prejudices as an ecclesiastick, but by having been disappointed in his hopes of promotion, which I shall have occasion to say more of hereafter. His malignity appears very strong in this instance: for surely that
 prince

prince deserved no blame, but rather much BOOK II.
commendation, for this part of his conduct.

A generous hospitality is not the least of royal virtues. It does honour to a nation, and is attended with many political benefits: for guests, who have been obliged by favours conferred upon them in a foreign court, return home the partizans and friends of that court, and often serve it more usefully than its ministers. Nor can there be a more shameful weakness in a king, than the allowing his courtiers to consider his wealth as a part of their property. Henry was too wise to encourage such a notion. He did not suffer those about him to confine to themselves either his purse or his ear. As his own judgment directed the course of his bounty, so his affability extended itself even to the meanest of his subjects: insomuch that his ministers must have found it a very difficult matter to conceal from him any truth which it was useful for him to know. But though his ears were always open to information or complaint, his heart was shut against calumny: nor did any good servant, through the whole course of his long reign, suffer any loss of favour or credit by the secret whispers of malice, or the vain and groundless clamour of popular rumours. He was so constant in his friendships, and chose his ministers with such discretion, that not one of those whom he principally trusted was ever disgraced; except only Becket, who rather quitted, than lost, the place he had gained

BOOK II. in his heart. The persons who are most steady in their attachments are generally most apt to retain their averfions: and I find it observed in the character of this prince, that whom he once hated he could hardly be perfuaded to admit any more to a fhare of his favour: but it does not appear that he ever hated any man without a fufficient caufe. With what a generous clemency he pardoned rebellions, and other offences committed againft himfelf, fome remarkable inftances have already been given, and more will occur in the latter parts of this hiftory: but there is one which it is proper to take notice of it here, as it will not fall-in with the feries of events in the following books.

V. G. Camb.
part ii. p. 427.
in Angliâ
facrâ.

Some gentlemen of his court being accufed, in his prefence, of having, at the fuggestion of the bifhop of Worcefter, talked of him indecently and to his difhonour, they did not deny the words which were laid to their charge, but alledged that they were fpoken when their minds were heated and difordered with wine. On this apology, he difmiffed them all without any punifhment, and retained no unkindnefs towards them or the bifhop: an admirable proof of true magnanimity, and fuch as is found in few princes! for even the beft are fometimes more angry at any liberty taken with their perfons, than at an act of high treafon againft their crown. But Henry's good-nature got the better of his pride; and he was fo wife as to know, that his character would gain

gain more by this moderation, than it could BOOK II.
suffer by any injurious aspersions. Nor would he encourage the baseness and malignity of informers, who endeavour to recommend themselves to the favour of a prince, by bringing to his ear the unweighed expressions of men in their hours of freedom; a practice as pernicious to the quiet of the sovereign, as to the security of the subject. Henry's behaviour on this occasion effectually delivered his court from that pest, and rendered the air of it pure and healthful to liberty.

Of the piety of this prince we have a remarkable testimony from William Fitz-Stephen, a contemporary writer of Becket's life. He tells us, that the king would sometimes watch with the monks of Merton-abbey three nights before Easter; and that, after the evening-service on Good Friday, he was accustomed to spend the remainder of the night, till the hour of nine, when the service of Easter eve begins, in walking on foot, and muffled up in a cowl, with only one companion, to visit all the poor churches in the neighbourhood, and perform his devotions in them. The serious sense of religion, which these practices seem to indicate, however tinged with a degree of innocent superstition, deserves great praise; and more especially in a monarch, who with so much spirit opposed the encroachments of the church on the temporal rights of the state.

BOOK II.

V. G. Camb
ut *suprà*,
& Petri Bles.
epist.
ut *suprà*.

No gentleman of that age excelled him in politeness, or had a more becoming and agreeable manner of conversing with all who approached him. His wit was very lively, but neither petulant nor ill-natured: so that it made him no enemies, nor ever let down the dignity of his character. He had also the advantage of a wonderful memory, and a great flow of natural eloquence; which happy endowments he improved by a continual application to learning. For he was not content (as princes usually are) with the rudiments acquired in his childhood; but constantly employed a great part of his leisure in secret study, or in assemblies of churchmen, with whom he delighted to reason, and to hear their opinions, on points of literature and science. His daily school (says Peter of Blois) was the conversation of the most learned men, and a kind of academical discussion of questions.

V. P. Bles.
ut *suprà*.

V. Fitz-Ste-
phen in vita
S. T. Cantuar.

With his intimate friends he lived in the most gracious and easy familiarity, particularly with Becket, to whose house and table he would frequently come uninvited and unexpected. *After they had finished their serious affairs, they played together* (says a writer of Becket's life) *like two boys of the same age.* The king's good humour seems indeed to have been sometimes *too playful in the eye of the publick.* But the notions of decorum were not in those times so high and rigid as now: nor could the military life, then led by our monarchs,

monarchs, be rendered consistent with all that BOOK II.
pride of royal state, which the forms of a settled court are thought to require. Indeed any king may safely and amiably divest himself of his majesty, in hours of recreation, if he knows how to keep it up on proper occasions; and if those companions, whom he chuses to unbend himself with, are neither so mean, nor so vicious, as by their intimacy to dishonour and lessen his character. Henry had sported with his chancellor, and with the nobility of his court: but it does not appear that he ever contaminated himself with the low society of buffoons, or any of those who find access to the leisure hours of princes, by ministering to their vices, or soothing their follies.

His favourite diversion was hunting; in which he followed the customs of his ancestors, and more especially of the Normans, who took a pride in this exercise, as indicating a manly temper of mind, and forming the body to the toils and hardships of war. We are told by his secretary, Peter of Blois, that, when ^{V. Epistol. ut supra.} he was not reading, or at council, he had always in his hands a sword, or a hunting spear, or a bow and arrows. The hunting spear was used against wild boars, which were then in our forests, and adding greatly to the danger added also to the honour of this recreation. Henry rose by break of day, pursued the chace till evening with unabated ardour, and when he came home, though all his servants were tired with following him, he would not sit down;

BOOK II. down; but was always on his feet, except at his meals, which he usually made very short. Even while he was consulting on business with his ministers, he stood or walked. Thus he kept down a disposition to corpulency which would have otherwise incommoded him, and preserved the alacrity of youth to old age. From the continual habit of exercise he was so indefatigable, that he would perform in one day (if occasion required it) a journey of three or four to an ordinary traveler; by which expedition he often came unexpectedly upon his enemies, disconcerted the measures they were taking against him, and crushed the first motions to rebellion or sedition, even in the most distant parts of all the several states that were under his government. The frequent progresses he made about England have already been mentioned. They were very beneficial to his people; the execution of the laws, the good order of cities, the improvement of agriculture, manufactures, and trade, being thus under his own immediate inspection. He was the soul of his kingdom, pervading every part of it, and animating the whole with his active vivacity. Nor were his cares for the publick interrupted by luxury, or the powers of his mind disordered and enfeebled by excess. He was constantly sober, and often abstemious both in eating and drinking. His table was frugal, his diet plain, and in his dress he affected the utmost simplicity, disliking all ornaments, which might incumber him and hinder his exercise,

exercise, or shew an effeminate regard to his person. Yet this did not proceed from inattention to women. He was but too sensible of the power of their attractions, and too desirous to please them, even to the end of his life. BOOK II.

His first mistress was Rosamond, daughter of Walter de Clifford, a baron of Herefordshire, and the most celebrated beauty in England. Their intrigue must have begun in the year eleven hundred and forty-nine, during the short stay he made in the western parts of that kingdom, before he went to join the Scotch at Carlisle, and when he was very little more than sixteen years old: for after that time he never was in England till the beginning of the year eleven hundred and fifty-three; and from good authority it appears, that his younger son by this lady was almost twenty years old, when he was elected bishop of Lincoln, in the year eleven hundred and seventy-three. The eldest must therefore have been born in the year eleven hundred and fifty; unless we suppose that his mother followed her lover into France, of which there is not the least intimation in any ancient author. At Henry's return into England, in January eleven hundred and fifty-three, he renewed his amour with her, and she must have brought him Geoffry her second son during the course of that year. As he was then married, he might, probably, be afraid of Eleanor's jealousy, and solicitous to hide his intrigue

V. G. Camb.
de vitâ Gal-
fridi archiep.
c. i. in Angliâ
sacrâ, t. ii.
Diceto Imag.
histor. sub
ann. 1173.

BOOK II.

trigue from her knowledge; which he might think still more necessary, when she was with him in England, after he came to the crown. And this may have given rise to the romantic tradition, mentioned by Brompton, of his having made a kind of labyrinth in his palace of Woodstock, to conceal his mistress from the sight and vengeance of his queen. But the tale of her having been poisoned in that palace by Eleanor has no foundation. Before her death she retired to the nunnery of Godstow near Oxford; and there she died, in what year I cannot find; but it appears that it was during the life of her father. Henry bestowed large revenues on the convent; in return for which he required, that lamps should be kept perpetually burning about the remains of this lady, which were placed near the high altar, in a tomb covered with silk: but, under the reign of his successor Hugh, bishop of Lincoln, commanded them to be taken away from thence, as being unworthy of so holy a place: upon which they were removed to the chapter-house of the nunnery, and there interred. It may be questioned, whether mere piety and zeal against vice excited the bishop to this act, or a desire of making his court to Eleanor, who then governed the kingdom. That Rosamond, after her retreat from the world and her lover, lived the life of a penitent, and died in the communion of the church, I see no room to doubt; but, if the tender respect, which Henry paid to her memory, was carried

See Dugdale's
Baronage,
CLIFFORD.

Hoveden,
pars post.
Ricard. I.
f. 405.
sect. 20.

ried too far, it was (to say the worst of it) the BOOK II. amiable extravagance of a good heart. One should suppose, that, so long as their connection continued, he had no other mistress. Yet we are told, by a writer of Becket's life, that, before the promotion of that prelate to Canterbury, there was at Stafford a very handsome girl, with whom Henry was said to cohabit. Possibly Rosamond might be dead before this intrigue began. Fitz-Stephen, in his account of the beginning of the quarrel between Henry and Becket, mentions a sister of the earl of Clare and Pembroke, as the greatest beauty in England, and one for whom the king had entertained a passion: but that she did not yield to his desires may be inferred from the expression made use of by that author. There was one Morgan, provost of Beverley, who was said to be his son by the wife of Sir Ralph Blewit, or (as others write it) Blower: and was so proud of his birth, that, rather than deny it in the presence of the pope, he renounced his election to the bishoprick of Durham: but I do not find that he was ever acknowledged by his supposed father: and some authors say, that his mother was not the wife, but the daughter of Sir Ralph; which is the more probable account, as he was called, not Blewit, but Morgan. It appears from records, that Henry had a natural daughter, named Matilda, whom he made abbess of Berking, after the death of Becket's sister, and whose mother's name was Joanna: but when she was born,

V. Wilhelm.
in Quadrilog.

Inter Brevia
Regis apud
Turrim Lond.
de ann. 19
Edw. II.

BOOK II.

born, or of what family her mother was, is uncertain. I shall have occasion hereafter to mention other instances of his incontinence, and some that produced the most unhappy effects: but in his love for Rosamond, or any other of the above-mentioned ladies, there was no other weakness than what is inseparable from the passion itself, irregularly indulged. He never sacrificed to them one hour of business, or suffered them to meddle in the government of his kingdom. Nor was he lavish in bestowing either honours or riches on their relations or dependents. No worthless man ever rose to power by their favour; no worthy man ever incurred a disgrace at court by their malice. Henry was indeed too frequently a lover; *but he was always a king.*

V. Malmsh.
f. 57. l. iii.
de W. I.

Some cursory observations have already been made on the manners of the nation, as they were in those days, but not so particularly as the subject requires. There is a remarkable passage in William of Malmshbury upon the different characters of the English and Normans. He says, that, before the latter had obtained possession of England, learning and religion were brought to so low a state in that kingdom, that most of the clergy could hardly read divine service; and, if, happily, any one of them understood grammar, he was admired and wondered at by the rest as a prodigy. The English nobility were very deficient in the external duties of piety; it being customary among them, even for those who were married,

ried, to hear matins and mass said to them in BOOK II.
 their bed-chambers before they were up, and
 as fast as the priests could possibly hurry them
 over, instead of attending divine service, with
 proper solemnity, in churches or chapels.
 Many of them were guilty of the unna-
 tural inhumanity of selling their female slaves,
 whom they had kept as their concubines,
 when they were big with child by them, either
 to publick prostitution, or to perpetual slavery
 in foreign lands. They were also universally
 addicted to drunkenness, and continued over
 their cups whole days and nights, keeping
 open house, and spending all the income of
 their estates in riotous feasts, where they eat
 and drank to excess, without any elegant or
 magnificent luxury. Their houses were gene-
 rally small and mean, their garments plain Idem, f. 56.
l. iii. sect. 20.
 and succinct: they cut their hair short, and
 shaved their faces, except the upper lip; wear-
 ing no ornament but heavy bracelets of gold
 on their arms, and painted figures, that were
 burnt into the skin, on some parts of their
 bodies. The Normans on the contrary (as the
 same author informs us) affected great finery
 and pomp in their cloaths; and were delicate
 in their food, but without any excess. They
 spent little in house-keeping, but were very
 expensive and magnificent in their buildings,
 making that their chief pride, and introducing
 a new and better mode of architecture into
 this island. Nor did they only display this
 magni-

BOOK II.

V. Usher An-
tiquit. eccles.
Britan.

V. Malmsh.
ut supra.

magnificente in their own private houses; but embellished all the kingdom with churches and convents more splendid and elegant than those of the English. They are also commended by the above-mentioned historian, for establishing here a more decent and more regular form of religion: but yet it is certain, that, by admitting new doctrines of popery, to which the Anglo-Saxon church had never assented, they further corrupted the purity of the Christian faith in this island. He adds, that they were faithful to their liege-lords, if they were not ill used; but that, on occasion of the lightest offence given to them, they broke their allegiance; that, being accustomed to a military life, and hardly knowing how to live without war, they made it with ardour; but, if they could not succeed by open force, they understood equally well how to employ both fraud and bribery; whereas the English had only a rash and impetuous valour. He likewise tells us, that the Normans were apt to sell justice; that they were full of emulation, ambition, and envy; that they frequently themselves oppressed their vassals, but bravely defended them against all others; willingly intermixed with the people they had conquered, and of all nations in the world were the kindest to foreigners, putting them upon an equal foot with themselves, if they came to settle among them.

Such is the picture drawn by William of Malmshury of the English and Normans compared

pared and contrasted together : and no writer of those times was better qualified than he to form a true judgement of their good and ill qualities, or more impartial between them ; for he had very good sense, with much knowledge of the world, and was equally related in blood to both nations. Nevertheless the diversity, which he has observed in their manners, did not remain till the times in which he wrote. He tells us himself, that the English soon accommodated themselves to those of the Normans, after they had been forced to submit to their government, except in one article, namely, their temperance in eating and drinking ; but, instead of learning that, they communicated to them their own habits of drunkenness and immoderate feasting, which continued for many ages the national vices of their common posterity.

BOOK II.

V. Malmsh.

Prologum

l. iii. de gestis

reg. Anglor.

In weighing the merits of each people, as here described, it will be found that the Normans were greatly superior to the English in politeness and knowledge ; and it may therefore be thought, that, by a mixture with them, the latter received such improvements, as were a sufficient compensation for the many evils brought upon them in other respects. It must also be confessed, that, so long as the Anglo-Saxons were masters of England, that kingdom was of no account in the system of Europe ; but grew to have weight and authority on the continent under the government of the Normans, both from the dominions which the princes of that

BOOK II.

race possessed in France, and from their active ambition, which, seconded by the enterprising and warlike disposition of all their nobility, rendered the English name respected and illustrious abroad. But whether this honour was not purchased too dear, by the loss of that peace, which the situation of England, especially if united with Scotland and Wales, might have secured to it under the government and *island-policy* of the Saxons, may well be disputed. Besides the constant expence of blood and treasure, one great mischief occasioned by it was the taking-off the attention of many of our kings from the important objects of agriculture, manufactures, and commerce. Yet, on the other hand, it is certain that foreign wars, by exercising the valour, increase the strength of a nation, which, remaining long unemployed, is very apt to decay, and sink into an infirm and effeminate softness, particularly where the people are much addicted to commerce, the mercantile spirit prevailing over the military more than is consistent with the safety or virtue of a state. To keep up the energy of both these spirits in a proper degree, and without prejudice to each other, is a very important and very difficult work of political wisdom, which has been performed in few governments either ancient or modern.

The military art, during the times of which I write, was in many particulars the same with that of the ancient Romans. We are informed by a contemporary German historian, that,

that, in the method of encamping, and of be-
sieging towns or castles, the Emperor Frede-
rick Barbarossa followed their rules. And
the histories of the holy war, written within
the same age, describe the sieges made in
Asia, by the English and French, agreeably
to those carried on under the discipline of that
nation. We have one, composed by an Eng-
lishman, Geoffry de Vinefauf, that gives a
particular relation of the siege of Acre, or
Ptolemais, to which he accompanied king
Richard the First. It appears from thence,
that the besiegers, among other machines
which had been used by the Romans, had
moveable towers, built of wood, and of such
a height, that the tops of them overlooked
the battlements of the city. They were
covered with raw hides, to prevent their being
burnt; and had also a network of ropes,
which hung before them, and was intended to
deaden the violence of the stones, that were
thrown against them from the engines of the
besieged. Those engines were called by this
author *petrariæ*, but were the *balistæ* of the
ancients; and, according to his account of
them, their force was prodigious: they threw
stones of a vast weight, and were employed
by the besiegers to batter the walls, as by
the besieged to defend them. He likewise men-
tions the cross-bow among the weapons made
use of in that siege. It had been introduced
into England by William the Conqueror,
who greatly availed himself of it at the

BOOK II.

V. R. devic.

l. ii. c. 2.

c. 58.

V. Galf.

Vinefauf,

Angl.

Ricard. Reg.

iter Hierosol.

c. 36.

V. P. Daniel

Hist. de la mi-

lice Francoise,

c. i. p. 62.

V. G. Vine-

fauf, ut sup.

V. G. Pictav.

Gust. G. Duc.

Nor. p. 201.

BOOK II.

P. Daniel hist.
de la milice
Françoise,
l. vi. p. 424,
425.
G. la Breton
Philippiad.
l. v.

battle of Hastings: but the second Lateran council having forbidden it in wars between Christian nations, it was laid aside in this country during the reigns of King Stephen and of Henry the Second. Nevertheless Richard the First, at his return out of Palestine, brought it again into France, very fatally for himself, as he was killed soon afterwards by an arrow shot out of that engine.

The manner of fortifying towns and castles, as well as the methods both of attack and defence, were still much the same as had been used by the Romans; but the armies differed much from those of that people, for their principal strength was in the cavalry; whereas, among the Romans, it was in the legions, which were chiefly composed of infantry. And this variation produced others, in the manner of fighting, and of ranging the troops. Yet, upon many occasions, the horsemen dismounted to fight on foot; and this seems to have been done by the English more frequently than by most other nations. The infantry, for the most part, were archers and slingers; nor were there any in the world more excellent at that time than those belonging to this island, the Normans having communicated their skill to the Saxons, and the Welsh being famous for strength and dexterity in drawing the bow. The offensive arms of the cavalry were lances and swords: but they also used battle-axes, and maces of different sorts; and some fought with ponderous mallets

lets or clubs of iron. I cannot better describe BOOK II.
 their defensive armour, than by translating
 the words of a contemporary historian, who
 has given an account of the manner in which
 the order of knighthood was conferred on the
 father of King Henry the Second. “ They
 “ put him on (says that author) an incom- V. Monach.
Mairemb.
hist. Gaufrid.
 “ parable habergeon, composed of double Duc. See
also Selden’s.
 “ plates or scollops of steel, which no arrow Titles of
Honour.
 “ or lance could penetrate. They gave him
 “ cuishes, or boots of iron, made equally And Pere
Dan. hist. de
la milice
Françoise,
l. vi. p. 385.
 “ strong. They put gilt spurs on his feet,
 “ and hung on his neck a shield, or buckler,
 “ on which lions of gold were painted. On
 “ his head they placed a helmet, which glit-
 “ tered all over with precious stones, and
 “ was so well forged, that no sword could
 “ cleave or pierce it.”

This armour, it may be presumed, was
 richer than that of ordinary knights, and of
 more excellent workmanship in the temper of
 the steel; but in other respects much the
 same. The habergeons, or coats of mail,
 were different from the cuirasses used in later
 times, being formed of double plates of iron,
 and covering the arms and shoulders of the
 knights, as well as their bodies. Under these
 they wore other coats, of leather, or of taf-
 sety, quilted with wool. The several parts of
 the outward armour were so artfully joined, that
 the whole man was defended by it from head
 to foot, and rendered almost invulnerable, ex-
 cept by contusions, or by the point of a lance

V. Gul. Brit-
 ton, p. 263.
 as cited by P.
 Daniel, hist.
 de la milice
 Françoise,
 l. vi. p. 384.

BOOK II. or sword running into his eye through the holes that were left for sight in the vizor of the helmet: but if it happened that the horse was killed or thrown down, or that the rider was dismounted, he could make but little resistance, and was either taken prisoner, or slain on the ground with short daggers, which were usually worn by the horsemen for that purpose. It being customary for all who were taken in war to ransom themselves with sums of money, which were generally paid to those who took them in proportion to the rank of the captives, good quarter was given.

V. Ord.
Vital. l. xii.
p. 854.

There is a remarkable passage relating to this subject, in Ordericus Vitalis, a writer contemporary with King Henry the First. He tells us, that in a battle between Louis le Gros and that prince, of which an account has been given in a former part of this work, nine hundred knights were engaged, and only two of them killed: "because (says the historian) " they were cloathed all over with iron, and " from their fear of God, and the acquaintance they had contracted by living together, they spared one another, and rather " desired to take than kill those who fled."

V. Histoire
Florentine,
L. vii. p. 288.

Some battles in Italy, which Machiavel has described, as fought by the mercenary bands of that country, in the fourteenth and fifteenth centuries, were of the same kind. But it must be observed, that one of the reasons here given by Ordericus Vitalis, why so few of the knights, or men at arms, were slain in this action,

action, viz. that they spared one another, out BOOK II.
of regard to the acquaintance they had contracted by living together, did not hold in engagements between different nations, that were not so connected as the French and Normans; nor in civil wars, where the animosity is increased, not diminished, by the knowledge which the adverse parties have of each other: and therefore in these we do not find that the battles were so harmless: yet the greatest slaughter was generally made of the foot, who were neither so well armed for defence as the knights, nor able to pay so high a price for their ransoms.

Roger de Hoveden speaks of horses covered with armour, in the reign of Richard the First: but I find no mention thereof in the times of which I write; and that they were not usually so armed in the reign of Henry the First, may be proved from an action, before related, between Odo de Borleng, and the barons of Normandy, who had revolted against that prince, in which all the horses of the rebels were killed by the arrows of the English, though not one of the riders was wounded.

V. Hoveden, f. 444. 2. sect. 50.

In the above-recited passage, concerning the arms that were given to Geoffry Plantagenet when he received the order of knighthood, it is said, “ they brought him a lance of ash
“ armed with the steel of Poitou, and a sword
“ from the royal treasure, where it had been
“ laid up from old times, being the workman-

BOOK II. “ship of Galan, the most excellent of all sword-smiths, who had exerted in forging it his utmost art and labour.” A skilful sword-smith was then so necessary to a warrior, that it is no wonder the name of one who excelled in his profession should be thus recorded in history, and a sword of his making deposited in the treasury of a king. It must be observed, that, in those days, a superior degree of bodily strength gave a double advantage; for the strongest knight could wear the heaviest armour; whereby he was better secured than others against the weapons of an enemy; and at the same time he could wield the most ponderous weapons, which the armour of others was unable to resist. This advantage was still increased, if his sword was finely tempered, and his defensive arms were rendered more impenetrable by the skill of the armourer in preparing the steel. Thus some extraordinary acts of personal valour, which are related in our ancient histories, and seem to us quite incredible, may indeed be true. A single man, in a narrow pass, may have defended it against a great number of assailants; and the success of a battle may have sometimes been decided by the particular prowess of a few knights, or men at arms. Geoffry de Vineauf, in his account of the crusade against Saladin, makes the officers of the Turkish forces say to that prince, in excuse of their having been beaten in an engagement with
the

the English, *that they could not hurt the enemy, who were not armed as they were; but with impenetrable armour, which yielded to no weapons; so that in assaulting them they seemed to strike against flints.* The same author describes the Turks, in another part of his book, as being armed very slightly, but bearing a quiver full of arrows, a club set thick with sharp spikes, a sword, a light javelin, and a short dagger or knife. Yet it appears, from his own relations of several battles, that with these weapons they often killed a great number of the Christians: and therefore we must understand the passage before cited with some allowance for a degree of exaggeration. We also find that the armour of the knights in those days was not always proof against arrows from Welsh or English bows. And such violent strokes were given with maces and clubs of iron, as no helmets could resist. Besides the heavy cavalry, there was a sort of light-horse, that only wore an habergeon and skull-cap of that metal. Some of the infantry had also skull-caps and jaquettes of mail, with targets of wood, or light breast-plates. It was customary for knights to bear their coats of arms painted, either upon the rims, or in the middle of their shields; and their helmets were adorned with different crests, which, together with the arms, remained to their families. Some good authors have ascribed the origin of this custom, from whence the modern science of heraldry was derived, to the institution of tilts and tournaments

V. Gul. le Breton. Philip. p. 263. et P. Daniel hist. de la milice Française, p. 392.

BOOK II.

V. Essai sur
la Ville de
Paris.

tournaments in the tenth century; but others date it from the crusade under Godfrey of Bouillon, when the confusion arising from so great a number of noblemen of different nations serving together made them invent these distinctions. A late ingenious French writer has very justly observed, that wearing such ensigns on their shields, and appropriating them to distinguish particular families, could not have been the general practice in Europe till after the death of William the Conqueror: for, if it had, his son Robert must have known him by his armour, and could not have ignorantly thrown him to the ground, as hath been related in the book prefixed to this history.

V. Selden de
Duello.

Tilts and tournaments, we are told, were first introduced into Germany by the emperor Henry, surnamed the Fowler, who died in the year nine hundred and thirty-six; and who, among other ordinances relating to those sports, forbade the admitting of any person to joust, who could not prove a nobility of four descents. Soon afterwards, they were brought into England by King Edgar; and, in the following century, were established all over France. Geoffry de Preuilly, a baron of Anjou, is mentioned in some of the histories or chronicles of that age, as the first who introduced them into that kingdom: but Father Daniel rather thinks, that he only drew up a code of laws, by which they were regulated; and that those regulations had been settled by

Hist. de la
milice Fran-
çoise, l. vi.

by the king and the nobility in their assem- BOOK II
 blies.

These entertainments are justly called, by some of our ancient historians, *military exercises* and *preludes of war*. For they were of very great use to instruct the nobility in all the methods of fighting which prevailed at that time, but especially in the dextrous management of their horses and lances. They also kept up a martial disposition, and an eager emulation for military glory, in time of peace. But, as they were frequently attended with accidents fatal to the lives of the combatants, Pope Innocent the Second and Eugenius the Third made canons against them, by which all who should die in them were denied Christian burial. Yet, notwithstanding the severity of this prohibition, they continued in France; and a few of them were held under King Stephen in England; but Henry the second, from the humanity of his nature, or, perhaps, to shew his respect for the authority of the church, where the interest of the state did not absolutely oppose it, most strictly forbade them. His sons revived the practice of them, especially his successor, Richard, whose ardour for them was violent, because no person excelled in them more than himself: nor did they entirely cease in England till the latter end of the sixteenth century; for, in the year fifteen hundred and seventy-two, among other pomps for the entertainment of the duke of Anjou, Queen Elizabeth held a tournament in

BOOK II. in the tilt-yard at London, where Sir Philip Sidney won the prize: and carousals, another mode of them, but not so dangerous, continued in use under James and Charles the First. It must be likewise remarked, that, although tournaments were prohibited by King Henry the Second, the exercises practised there, and the emulation excited by them, were not intermitted during the course of his reign. A contemporary writer informs us, in giving an account of the city of London, that, on every Sunday in Lent, the sons of the citizens sallied forth in troops from the gates, mounted on war-horses, and armed with shields and lances, or, instead of lances, with javelins, the iron of which was taken off, in order to exercise themselves in a representation and image of war, by mock-fights, and other acts of military contention. He adds too, that many courtiers, from the neighbouring palace, and young gentlemen of noble families, who had not yet been knighted, came to combat with them on these occasions: it cannot be doubted, that those noblemen, who had been honoured with knighthood, had proper places of exercise, for keeping up their skill in horsemanship, and the dexterity they had acquired in the management of their arms. The above-mentioned author says further, that, on every holiday throughout the whole summer, it was usual for the young citizens to go out into the fields, and practise archery, wrestling, throwing of stones and missile weapons, with

See the Works of Sir P. Sidney, and Preface.

See Fitz-Stephen's account of London, prefixed to his Life of Becket.

with other such martial sports. And, during ^{BOOK II.} the festival of Easter, they represented a kind of naval fight on the river Thames.

The most particular and authentick account I have met with of the navies in those days, and also of the manner of fighting at sea, is in the before-cited history of Geoffry de Vinesauf. From his description it appears, that the ships of war were all *Gallies*; but he says, that in his time they had generally no more than two rows of oars; and he adds, that the vessel, which the Romans called *Liburna*, was then named a galley, being long, narrow, and low-built. To the prow was affixed a piece of wood, commonly then called a *spur*, but by the ancients a *rostrum*, which was designed to strike and pierce the ships of the enemy; but there were also lesser gallies, with only one tier of oars, which being shorter, and therefore moved with greater facility, were fitter for throwing wild-fire, and made use of to that purpose. The same writer has related all the circumstances of a sea-fight, which the Christians, who were going to the siege of Ptolemais, had with the Turks on that coast. He tells us, that when the fleets were advancing to engage, that of the Christians was drawn up, not in a strait line of battle, but in a crescent or half-moon; to the intent, that, if the enemy should attempt to break-in, they might be inclosed in that curve, and consequently overpowered. In the front of the half-moon (that is, at

BOOK II. the two ends of the curve) the Christians placed their strongest galleys, that they might attack with more alacrity, and better repel the attacks of the enemy. On the upper deck of each galley the soldiers belonging to it were drawn up in a circle, with their bucklers closely joined; and on the lower deck the rowers sat all together, so that those who were to fight, and were placed above for that purpose, might have the more room. The action began, on both sides, with a discharge of their missile weapons: then the Christians rowed forwards as swiftly as they could, and shocked the enemy's galleys with the spurs or beaks of theirs: after which they came to close-fighting; the opposite oars were mixed and entangled together; they fixed the galleys to each other by grappling irons thrown out on both sides; and fired the planks with a kind of burning oil, commonly called *Greek wild-fire*. The account which the same historian gives of *that wild-fire* is worth transcribing. His words are these: "*With a pernicious stench and livid flames it consumes even flint and iron: nor can it be extinguished by water: but by sprinkling sand upon it the violence of it may be abated; and vinegar poured upon it will put it out.*"

We know of none such at present. The composition was first discovered by Callinicus, an architect, who came from Syria to Constantinople; and the Greek emperors, for some time, kept the secret to themselves. Constantine Porphyrogenitus, in his treatise on the administration of the empire, which he dedicated

V. Montequieu, Causes de la grandeur et decad. de l'emp. Rom.

cated to his son, advises that prince to answer the barbarians, who should desire him to give them any of the *Greek fire*, that he was not allowed to part with it, *because an angel, who gave it to Constantine the Great, commanded him to refuse it to all other nations.* While this advice was adhered to, the wild-fire proved of great use to the defence of the empire; several fleets, which came to invade Constantinople, having been burnt and destroyed by it; but it appears, by the passage above-quoted, that in the twelfth century the secret was known to many other nations, and even to the Mahometans. I find also that it was used in the attack and defence of towns and castles.

The Saxon chronicle tells us, that King Alfred, to oppose the invasions of the Danes, ordered a number of ships, or rather galleys, to be built upon a new model, different from those which were used by that nation, or by the Frisians; being higher than any of theirs, and almost twice as long, better sailers, more steady, and more proper for war. Of these some had sixty oars, and others more. Experience shewed that they were superior to any of those ships with which the northern corsairs had infested the coasts of England, till this admirable prince, whose genius and application to whatever might conduce to the benefit of the publick instructed his subjects in all kinds of useful knowledge, made this improvement in the naval architecture of the Anglo-

Chron.
Saxon. sub
ann. 879.

BOOK II. Anglo-Saxons. His son, and grandsons, after the wise example he had set them, kept up very strong fleets, which not only protected but enlarged their dominions. And (if we

V. Flor. Wig. may believe the accounts of some ancient historians) his great grandson Edgar raised the maritime force of England to such a degree, as
 sub ann. 938.
 Hoveden,
 sub ann. 937.

cannot be paralleled in the history of any other nation. They tell us, that this monarch had three several fleets, each of twelve hundred sail, and all stout ships, which were stationed to guard the different coasts of his kingdom; and that every year he cruised in each of these squadrons, so as to make, within that time, the whole tour of the island. If these ships had been built upon the same model as Alfred's, the number of rowers aboard of them, allowing but one to each oar, would have exceeded two hundred thousand, besides the mariners that were necessary to manage the sails, and soldiers for battle. But supposing that three in four of them were of a much smaller size, and carried no more than four and twenty men each, which was the lowest complement of any that we read of in those days, the number is still greater than England, not united either with Scotland or Wales, could possibly furnish, to be kept, as it is said these were, in constant employment. I am therefore surprized that Mr. Selden, in one of his most important and elaborate works, should seem to have given credit to this account, which certainly is exaggerated very far beyond truth :
 though

V. Mare
 Claus. c. 10.

though it is probable that King Edgar had a **BOOK II**
much stronger fleet, and more constantly
maintained on all the coasts of his kingdom,
than most of his predecessors; because we find
that he enjoyed a settled peace, through the
whole course of his reign, unmolested by any
of the people of the North, or other foreign
states. Yet he had not been dead above six or
seven years, when the naval power of the
English was so strangely reduced, or so ill
managed, that a Danish Squadron of seven
ships was able to insult some parts of their
coasts, and to plunder their town of South-
ampton. Nor did the loss and dishonour, which
the nation had sustained by this descent, excite
them to restore, or better regulate, their mari-
time force. For, ten years afterwards, Ethelred,
or rather those who had the direction of publick
business during the tender years of that prince,
could find no means of delivering the kingdom
from these invaders, but by giving them money;
for the raising of which a new tax, called *dane-*
geld, was imposed on the people.

Chron. Sax.
Flor. Wigorn.
et Malmib.
See also Sir
G. Croke's
Argument in
the case of the
ship-money,
State-Trials,
vol. i.

The natural effect of this timid measure was
to draw on other invasions. They accordingly
happened; and more compositions of the same
nature were exacted, each new payment being
higher than the foregoing: so that from ten
thousand they came to eight and forty thousand
pounds; a great sum in those days! One vi-
gorous effort was indeed made by Ethelred,
in the year one thousand and eight, to free
himself and his people from this infamous

Chron. Sax.
sub ann. 1000

BOOK II.

tribute, by a general tax on all the land of the kingdom, for fitting out of a fleet, which might effectually guard it against the Danes. Every three hundred and ten hides of land was charged to furnish a galley of three rows of oars, and every eight hides to provide a coat of mail and a helmet; which armour was for the soldiers, designed to be employed as marines, aboard of the fleet. This was done with the advice and consent of the parliament, or *witena gemote*: and the Saxon chronicle tells us, that the number of ships built and equipt the next year, by means of this imposition, was greater than any that the English nation had ever furnished under any former king. Mr. Selden observes, that, according to a computation made in Camden's *Britannia* from rolls of that age, the number of hides of land in England did not exceed two hundred and forty three thousand six hundred; which makes the number of ships obtained by this hidage seven hundred and eighty-five. This apparently was a fleet sufficient to have maintained the sovereignty of our seas against any other nation. Yet, by violent tempests and wicked treachery, it was soon destroyed; and the wretched expedient of compounding with the Danes was again taken up; which at last proceeded so far, that, in the year one thousand and twelve, the English nobility, after paying the tribute (though too late to prevent the enemy from over-running and subduing a great part of the kingdom) hired a squadron of Danish

Chron. Sax.
sub ann. 1009.

V. Mare
claus. c. 11.

Chron. Sax.
sub ann. 1012.

Danish ships to guard their coasts against the attacks of other corsairs. All England being soon afterwards subjected to Canute, that prince, in the year one thousand eighteen, dismissed all his Danish fleet, except forty ships, which he retained to secure his new-acquired dominions : but, in the year one thousand and twenty-eight, he carried with him to Norway fifty-five ships of war, which his English Thanes provided for him, and by which he was enabled to conquer that kingdom. His son and successor, Harold Harefoot, who reigned only four years, laid a tax upon the English to maintain constantly in his service sixteen ships of war, allowing eight marks to each rower, according to the establishment settled by Canute. His brother, Hardicanute, increased that number to sixty-two, with the same allowance to each rower ; for the defraying of which the English paid, in the second year of that king, twenty-one thousand and ninety-nine pounds : but presently afterward he reduced the number of ships to thirty-two, and the charge to eleven thousand and forty-eight pounds. In truth, it was not necessary that these Danish princes should keep any great naval forces for the defence of this island ; as they themselves had the dominion of those northern countries, from whence the former invasions and descents had been made ; and as no other power, then existing, could pretend to dispute with them the empire of the ocean.

BOOK II.

Chron. Sax.
sub ann. 1018.Ibidem, sub
ann. 1028.Ibidem, sub
ann. 1039.Chron. Sax.
sub ann. 1040.

BOOK II.

V. Malmfb.
de gestis Rēg.
Angl. l. ii.
c. 12. et alios.

Historians relate that earl Godwin, to appease the anger of his sovereign, Hardicanute, for the share he had in the death of Alfred, that prince's brother, presented him with a ship, the beak of which was of gold, and which carried eighty soldiers, of whom every one had on each arm a golden bracelet, that weighed sixteen ounces; on his head an iron helmet, gilt with gold, as were also the other parts of his armour; on his left shoulder a Danish battle-axe, and in his hand a javelin: which circumstances I here mention, not so much on account of the richness of the gift, as to shew the number of soldiers, that, in those days, served aboard of ships of war, and how they were armed. For it may reasonably be supposed, that this galley was equipt in much the same manner as others were at that time, except the peculiar magnificence of the gold in the beak and in the ornaments of the soldiers.

See Domef-
day Book and
Herming.
Chartul.
vol. i.

It appears from records, that danegeld was levied in the reign of Edward the Confessor, not to be paid to the Danes, but to oppose their invasions; and it seems to have been continued during the first eight years of that king, as a constant fund for his navy. We are told that he took it off, in the year of our Lord one thousand and fifty-one, because he saw the devil dance on a heap of the money collected by that tax: but Ingulphus, who mentions this ridiculous tale only as a popular rumour, gives us a very good reason why the lands of the kingdom were then discharged of this burthen, namely,

V. Ingulph.
p. 65. sub
ann. 1051.
edit. Gale.

namely, there being a great famine that year, BOOK II.
 which moved the king to remit it, out of charity to the poor. Yet it must be observed, that this *temporary* evil was no proper cause for abolishing a tax, which at other times might be necessary to *all perpetuity*; and therefore I much doubt the historian's exactness in saying it was so abolished. Edward's successor, Harold, V. Piclav. sect. 2. p. 201.
 drew together a fleet of seven hundred ships of war; and yet we do not find that any danegeld, or other similar imposition, was levied by that prince. This expence therefore must have greatly exhausted his treasury, and, together with the charge of his mercenary troops, will account for his having been so tenacious of the spoils he took from the Norwegians.

In the year one thousand and eighty-three Chron. Sax. sub ann. 1083.
 (or, as others say, eighty-four), William the Conqueror, apprehending a great invasion of Hoveden, sub ann. 1084.
 England from Denmark and Flanders, revived danegeld, and advanced it to six shillings a hide; but, as it appears that many lands, which, under the Anglo-Saxon, kings had been charged with this tax, were exempted from it by him (on the subject of which exemption I shall say more hereafter), it is probable, that, notwithstanding the augmentation of the charge, the produce was little more than had been obtained from former danegelds. We are told by the author of the dialogue *de Scaccario*, which was L. i. c. 12.
 written in the reign of Henry the Second,
 " that William the Conqueror would not re-
 " vive this tax (which, at first, had been ex-

BOOK II. “ acted upon urgent necessity in time of war)
 “ *as an annual supply* ; nor yet would he en-
 “ tirely give it up ; but reserved it to answer
 “ extraordinary and unforeseen occasions : for
 “ which reason it was rarely taken by him or
 “ his successors, and only when actual wars with
 “ foreign nations, or the fear thereof, came upon
 “ them.” It is not certain that danegeld, or,
 as the Saxon chronicle terms it, *militare tributum*,
 was ever exacted by William Rufus. He im-
 posed indeed a hidage of four shillings a hide on
 all the land of the kingdom ; but it was not ga-
 thered, like the former danegelds, for the aug-
 mentation or support of the royal navy, or for
 the defence of the coast, or any alarm of inva-
 sion, but to enable him to acquire the dutchy
 of Normandy, in mortgage, from his brother.
 I therefore consider this exaction as of a quite
 different nature, tho’, being levied from the lands
 of England, as danegeld had been, it was inac-
 curately so called. The aid to Henry the
 First, for the marriage of his daughter, which
 he claimed as a feudal right, is said by some
 writers to have been raised by a land tax, after
 the rate of three shillings on every hide of land.
 But nothing can be more improper than to call
 this a danegeld, though Mr. Madox has cited an
 old manuscript chronicle, in which it is so deno-
 minated. Henry of Huntingdon mentions it,
 but without that appellation. Nevertheless it
 appears by the *great roll*, commonly called the
 fifth of King Stephen, but which Mr. Madox
 has demonstrated to belong to the reign of
 Henry

Chron. Sax.
 p. 156. sub
 ann. 1040.

See Hist. of
 the Excheq.
 p. 475. c. 17.
 V. Huntingd.
 l. vii. f. 217.

Henry the First, that it was collected six years **BOOK II.** together by that king, and accounted for in the same words that were wont to be used in accounting for the settled yearly revenue. Of Stephen's reign we have no rolls; but notice is taken, in some histories, of his levying of daneland, which he had a good pretence to do, as he was in perpetual fear of invasions from Normandy, or other parts of France, in favour of Matilda or her son. We find by the rolls that it was paid in the first, second, twentieth, and twenty-first, years of Henry the Second. The low state in which he found the fleet of England might make it necessary for that prince to continue this imposition till the third year of his reign; and the danger of an invasion from France or Flanders might naturally induce him to revive it in the twentieth.

V. Dissertat. Epistol. de Magno Rot. Scaccarii, at the end of Madox's History of the Exchequer. See Hist. of the Excheq. c. 17.

What was the ordinary strength of the royal navy, from the times of William the Conqueror to those of Henry the Second inclusively, or to what number of ships it was increased upon extraordinary exigences, we are not well informed. But it appears, from a passage in the *Red book of the Exchequer*, that the *Cinque Ports*, during those times, were obliged, by their tenures, to provide fifty-two ships, and twenty-four men in each ship, for fifteen days, at their own charges, to defend the coasts, when required. And not only these, but other maritime, and even some inland towns, held by the same kind of service. This seems to have been the constant support of the navy: but

V. Libr. Rubrum Scaccarii. See also the argument of Sir F. Weston in the case of ship-money. See Mr. St. John's second day's argument for Mr. Hampden.

BOOK II.

upon extraordinary occasions danegeld was levied: and, although at the end of that century the name was lost, a like provision was often made, in every age, by our parliaments, for the defence of the British sea and security of the kingdom.

See Spelman's
Gloss. DANE-
GELD,

See also Sax.
Chron.
p. 195. sub
ann. 1089,
& H. Hunt.
l. vii. f. 213.
sect. 10.

V. H. Hunt.
l. vii. f. 216.
sect. 50.

It has been mentioned in former parts of this work, that the English fleet in the channel did William Rufus good service against his brother; a great number of Normans, who were coming over to support the pretensions of the latter, having been destroyed in their passage by the ships that guarded the coast of Sussex; which so intimidated Robert, that he durst not attempt another embarkation. A sufficient fleet was likewise sent by Henry the First, at the beginning of his reign, to oppose that prince in his passage between Normandy and England: but a part of it joined him; which enabled him to land without difficulty; and, a peace being soon concluded between the two brothers, this island remained exempt from the invasions of foreigners, or any alarm of that nature, till the war excited against Henry by the son of Duke Robert obliged him again to provide for the defence of his realm, by a proper exertion of its maritime power.

During the reign of Stephen, the English navy declined much in its strength; and we cannot wonder that it did: for the long intestine war, which desolated the kingdom, ruined its commerce: without which it is impossible for any prince to maintain a naval power.

This

This was restored, and probably augmented, by Henry the Second: yet it seems, that, till the latter part of his reign, he made no efforts to fit out any powerful fleets; because, being master of almost all the French coast, and in close alliance with the earls of Flanders and Boulogne, he feared no invasion. For the kings of Denmark had given up all intentions of renewing their claim to England; nor did their subjects, or any other of the northern nations, continue those piratical expeditions, which had been so troublesome to the English in former times. It seemed therefore unnecessary for Henry the Second to guard his coasts by great fleets; and, being busied upon the continent, he chiefly turned his thoughts to the increasing and strengthening of his land-forces, which he might better make use of, either to defend or enlarge his territories in France. Geoffry de Vinesauf tells us, that after King Richard the First had made himself master of Cyprus, when all his galleys were arrived in one of the ports of that island, the number of them, including five which he had taken from the Cypriots and added to his own, amounted to a hundred; whereof sixty were superior to the common armed galleys. And in another place he says, that a fleet so fine, and so well provided, had never been seen before. Besides the galleys, Richard had with him, when he sailed from the harbour of Messina in Sicily, a hundred and fifty great ships, which he used as transports. These, we are told,

C. 12.
V. Hoveden,
pars II. f. 393.

BOOK II.

told, he had selected from all the shipping in the ports of England, Normandy, Poitou, and his other maritime territories. That most of the galleys were built before the death of his father, I think very probable; for they could not otherwise have been ready to put to sea in so short a time after. A manuscript chronicle, of the age of Henry the Third, cited by Spelman in his Glossary, says that fifty of these were *triremes*, viz. galleys of three rows of oars; and that, among the other ships, thirteen, distinguished there by the name of *buffes*, carried, each of them, three masts. Upon the whole I presume, that the more numerous fleets, mentioned before in the English history, consisted of vessels much smaller than this of Richard.

V. Spelman's
Gloss. Bussæ.

V. Appendix
from Wilkins,
Sax. Leg.
Judicis Civ-
tatis Lond.
p. 71.
See also Spel-
man's Con-
cil. and Re-
mains.

There is a very remarkable law of King Athelstan, which says, that any merchant, who has made three voyages, upon his own account, beyond the British channel, or narrow seas, shall be entitled to the privilege of a Thane. This was a great encouragement given to commerce, and such, indeed, as it is very surprising to meet with in the history of so rude an age. Warlike nations, though infinitely more refined than the English were in those days, are apt to consider all trade as rather dishonouring, than ennobling, those who carry it on; it is therefore no small indication of the good sense of King Athelstan and his *witena gemote*, or parliament, that they broke through this prejudice, and made nobility the reward

reward of mercantile merit. It does not appear that the Norman kings adopted the same policy : but that, under some of those princes whose reigns are treated of in this work, England continued to enjoy a flourishing commerce, may be well inferred from the great quantity of money and plate contained in the treasury of William the Conqueror, of Henry the First, and of Henry the Second, at the time of their death. It has already been said, that, exclusive of the plate, the treasure left by William the Conqueror, in his palace at Winchester, amounted to sixty thousand pounds weight of silver in coined money; and that left by his son Henry to a hundred thousand. A contemporary writer likewise informs us, that, soon after the decease of King Henry the Second, Richard the First ordered an exact account to be taken, both in number and weight, of all his father's treasures, and found them amount to above ninety thousand pounds in silver and gold. Another says, that he caused all the treasures of his father, in silver and gold, to be weighed, and found that it greatly exceeded the value of a hundred thousand marks. It has been shewn before, that, in those days one pound of silver contained about as much of that metal as three pounds do now, and that a mark was two thirds of the value of that pound. The wealth of the prelates and chief nobles of the realm was proportionably great; and they had also much plate and other rich ornaments in their houses and wardrobes: nor did the

V. Benediſt.
Abbat. de
vitâ Ric. I.
ſub ann. 1182.
t. ii. p. 553.
edit. Hearne.

V. Hoveden
Annal. pars II.
ſ. 374.

See the Notes
to the Hiſtory
of the Revo-
lutions of
England at
the end of the
firſt volume,
on the value
of money.

piety

BOOK II. piety of the times omit to decorate, in a most sumptuous manner, the cathedral churches, and

See Dugdale's
Monasticon
and Baronage.

those belonging to several convents, with crucifixes, shrines, and vessels of gold and silver.

These precious metals being rare at that time in Europe, so much of them could not possibly have come into a country where the earth produced none, and which drew no supplies of them from the spoils or the tribute of any other nation, without a considerable balance of trade in its favour. Whether we had any exportation of woollen manufactures, during the times that I write of, I cannot absolutely affirm. But it appears undeniably,

Ma'or's
History of the
Exchequer,
c. 10. p. 231.

by the annual payments which they made to the crown, that there were many gilds of weavers in different parts of the kingdom. For example, in the fifth year of Henry the Second, the weavers of London stood charged in the Exchequer rolls with four marks of gold on the farm of their gild for two years. In other years of the said king they paid twelve pence per annum. And there are records of like payments from the weavers of Oxford, York, Nottingham, Huntingdon, Lincoln, and Winchester, in that and the following reign. On which I find this observation, in

See Hale's
Primitive
Original of
Mankind,
p. 161.

a treatise written by the learned Sir Matthew Hale, "*that, in the time of Henry the Second and Richard the First, this kingdom greatly flourished in the art of manufacturing woollen cloth: but by the troublesome wars in the time of King John and Henry the Third,*"
"and

“ and also of Edward the First and Edward the BOOK II.

“ Second, this manufacture was wholly lost, and

“ all our trade ran out in wool, woolfels, and

“ leather, carried out in specie.” It is also

observed by Mr. Madox, in his history of the Hist. of the
Exchequer,
c. 13. p. 354

Exchequer, that the cities of Worcester, Glo-

cester, Nottingham, Norwich, Bedford, and

many other towns, paid fines to king John,

that they might buy and sell dyed cloth, as they

were accustomed to do in the time of King Henry

the Second. This shews that both the *cloath-*

ing and *dying* trades had then flourished, and

had been free from some oppressions with which

they were afterwards loaded. It is reason-

able to suppose, that the Flemish colony, of

which much has been said in this book, when

they were dispersed over England, at their

first coming into Flanders, in the reign of

William the Conqueror, not only exercised

the art of weaving, which before their emigra-

tion they excelled in, but instructed the Eng-

lish, and improved their manufacture. One

may also presume, that when they were after-

wards settled in South Wales, upon the sea-

coast, they addicted themselves to foreign traf-

fick, and carried it on with the woollen cloths

which they continued to make. Indeed this

may be naturally inferred from the words of Vide Itinera-
rium Cam-
briae, l. i.

Giraldus Cambrensis, who, describing them as c. 11. p. 848.
de Havertord
et Rofs.

they were in the time of Henry the Second,

calls them a people most versed in woollen manu-

factures and merchandise, who, with any labour

or danger, would seek for gain by sea or land.

Perhaps

BOOK II. Perhaps it was to encourage these manufactures, that the exportation of *wool unwrought* was loaded with a duty of half a mark on each sack.

V. Radevic.
Frisingenſem
de rebus
geſtis Fred.
Imperatoris,
l. i. c. 7.

There is preſerved to us, in a contemporary German hiſtorian, a letter from Henry the Second to the emperor Frederick Barbaroffa, which he ſent in the year eleven hundred and fifty-ſeven, with magnificent preſents, in return to an embaffy and preſents of at leaſt an equal value, which he had received from that prince, who deſired to make with him a league of friendſhip and alliance. The king expreſſes therein his grateful acceptance of thoſe overtures from the emperor, and, among other benefits which would ariſe from that league, particularly mentions *the ſafety and freedom of commerce betwixt their reſpective kingdoms.*

A northern trade ſeems to have been a favorite object of the royal attention and care of Alfred the Great: there being inſerted into the preface of a tranſlation of Oroſius, made by that monarch, an account delivered to him by two navigators, a Norwegian, and an Engliſhman, employed by his orders; wherein they deſcribe, very ſenſibly, the coaſts, the inhabitants, and the fiſheries, of the North, as far as the utmoſt bounds of Norway and Finland. It is one of the moſt curious and valuable remains of our Saxon antiquities. Doubtleſs Alfred made an advantage of the diſcoveries he had taken ſuch pains to procure, by carrying on a very profitable trade with thoſe countries. But one
may

may reasonably presume that the English com-
 merce to the North was further increased in the
 reign of Canute the Great, to whom Denmark
 and Norway were subject. In the twenty-seventh
 year of King Henry the Second, a licence was
 given to export corn, from Norfolk and Suff-
 olk, to Norway. And in the reign of King
 John, a Danish merchant was allowed to have
 free traffic throughout the realm, on the easy
 condition of giving a hawk to that prince as
 often as he came into England.

BOOK II.
 See Madox's
 Hist. of the
 Exchequer,
 c. 13. p. 323.

324.

After the Normans had established them-
 selves in this island, its trade to France became
 naturally more extensive than before; espec-
 ially when Henry the Second, who held so
 great and so commercial a part of that king-
 dom, had gained a quiet possession of the throne
 of England. A principal branch of the im-
 ports, in the times of which I write, was for-
 eign wines, which were chiefly brought from
 France. It appears, by the rolls, that in the
 fourteenth year of King John duties were paid
 to that prince for wines of Anjou, Auxerre,
 and Gascony, besides others there called by the
 general name of French. I also find, in that
 account, mention made of the wines of Saxony,
 which probably came into fashion among the
 English, in the reign of Henry the Second,
 after the duke of Saxony had married his
 daughter. But it must be observed that the
 limits of that dutchy were then extended to the
 Rhine; and therefore these wines might be
 Rhenish. William of Malmfbury tells us,
 " that

Ibid. c. 12.
 p. 527.

BOOK II. “that the city of London, in his time, was
 De gestis “ illustrious and eminent for the wealth of its
 pontif. l. ii. “ citizens; crouded with merchants and fac-
 f. 133. sect. “ tors from every land, but chiefly from Ger-
 30. “ many; and a storehouse for the whole na-
 tion, in case of a dearth of corn and other
 Ibidem, l. iv. “ provisions.” The same author says, “ that
 f. 161. sect. “ the port of Bristol was full of ships, from Ire-
 50. “ land, Norway, and every part of Europe;
 “ which brought thither a great commerce,
 “ and much foreign wealth.” He likewise
 speaks of Exeter as a place of great traffic, to
 which resorted a great concourse of merchants
 and foreigners, at the time when he wrote.

Sir H. Spelman, in his code of the ancient
 statute laws of the kingdom of England, cites
 a passage from the chronicle of Battle-Abbey,
 which says, that, by the ancient law or custom
 of the English, when a ship was wrecked on
 the coast, if those who escaped from it did not
 repair to it within a limited time, the ship, and
 all belonging to it, that was driven ashore, be-
 came the right and property of the lord of the
 manor. But that King Henry the First, abhor-
 ring the custom, made a law, to be observed
 throughout all his dominions, that if but one
 man had escaped alive out of the wreck, the
 ship and its whole cargo should be given to
 him. Yet the chronicle adds, that this statute
 remained in force only during the life of the
 king who enacted it; for, under his successor,
 the nobles of the kingdom, paying no regard to
 it, restored the ancient custom, to their own
 benefit;

benefit; of which the writer gives an instance in a shipwreck that happened upon one of the estates of the abbey. It seems that Henry the Second revived the law of his grandfather, and enforced it with severe penalties against offenders. For William of Newbury says, that *out of his excellent goodness*, at the very beginning of his reign, he corrected a barbarous custom, which before had prevailed in this kingdom, with regard to wrecks on the coast; and, commanding the proper offices of humanity to be paid to all shipwrecked persons, ordained grievous punishments against those who should dare to do them any injury, or take from them any of their merchandise or effects. I am very sorry to observe, that, notwithstanding this law, made so many ages ago, and other statutes enacted since, with a view to restrain this most inhuman barbarity, it still remains a foul reproach and disgrace to our nation.

By the statute of the 27th of Henry the Second, which is called the *assize of arms*, and of which I shall speak more particularly hereafter, the itinerant judges were commanded to publish, in their several circuits, an injunction forbidding, under the highest penalties to the buyer and seller, the selling to foreigners any English ship, or drawing away any seamen into foreign service; from which it is evident, that the king, when that statute was made, attended very carefully to the naval strength of his kingdom.

BOOK II.

Having thus shewn, as far as we have any authentic information, the state of the English *marine* from the days of Alfred to those of Henry the Second; inclusively, I shall proceed to give likewise an account of the nature of the *land-forces* in England during that course of time.

V. Concil.
Eash. c. 22,
23.
Concil. Brit.
sub ann.
1009. Spelman's Re-
mains, Feuds
and Tenures,
c. 8.

It was a fundamental law of the Anglo-Saxons, that all the lands of the kingdom, even those which were held by ecclesiasticks and women, were subject to the three publick duties; the building or repairing of forts and castles; the building or repairing of bridges; and military service for the defence of the realm, called, in the Latin translation of the Saxon laws, *expeditio*.

We are told by Sir H. Spelman, "that
"the whole land was divided, either by Al-
"fred the Great, or some other preceding
"king, into two hundred forty-three thou-
"sand six hundred hides, or plough-lands:
"and, according to this division, were the
"military or other charges of the kingdom
"imposed." A hide of land is defined, by

V. Huntingd.
sub ann.
1008. Annal.
Waverleien.
sub ann.
1083.

H. of Huntingdon, and the annals of Waverley, to be as much as a single plough could till in a year: but, according to others, it was as much as would be sufficient to support a gentleman's family for that time, and therefore could not consist of any determined number of acres, but must have varied in proportion to the nature of the soil. One of the laws

of

of King Athelstan orders every plough, that **BOOK II.**
 is, every hide of land, to furnish two horse-^{Vid. Leges}
 men; an immense army, according to the com-^{Athelstani,}
 putation above given of the number of hides ^{Wilkins,}
 in England! But if so many were at any time ^{c. 16.}
 actually raised (which I am apt to doubt of),
 it is certain that the constant militia of the
 Saxons did not amount to that number; and,
 except in the case of *beneficiary tenants*, the
 service they owed appears to have been re-
 strained to the defence of the realm.

After the Normans came in, a different kind
 of military policy was established. The lands
 of England (as Ordericus Vitalis informs us) ^{V. Ord.}
 were so distributed by William the First, ^{Vital. l. iv.}
 that ^{p. 523.}

*the kingdom had always sixty thousand knights
 ready to serve, at the command of the king, as
 occasion should require.* It must be observed,
 that, in this passage, and several others in the
 books and records of those times, the word
knights must be understood to signify persons
 who held knights fees, not persons who had
 obtained the order of knighthood, concerning
 whom I shall have occasion to treat hereafter.

Other ancient evidences make the knights-fees, ^{V. Selden's}
 during the times that I write of, *sixty thousand* ^{Titles of ho-}
two hundred and fifteen; of which number ^{nor, part II.}
twenty-eight thousand one hundred and fifteen ^{c. 17. p. 720,}
were possessed by the church. A knight's-fee ^{721, 722.}
 seems to have been usually composed in those ^{Spelman's}
 days of two hides of land, or of two hides and ^{Gloss. FEU-}
 a half. Sir H. Spelman says, that a mesne ^{DUM, p. 218.}
 tenant, who had more than a single knight's- ^{See Spelman's}
 fee, ^{treatise on}
^{Feuds & Te-}
^{nures, c. 27.}

BOOK II. fee, was called a *vavasar*, which he thinks was a degree above knights; yet we generally find that name applied to any vassal who held a military fief of a tenant in chief of the crown. Those who held of a *vavasar* were called *val-vassini*, and each of these might, in like manner, enfeoff another, to hold of him by knights-service; though, I believe, that the instances of so many gradations in this species of tenure were not common in the days of King Henry the Second. But it was still more unusual for a fief to be held of the crown without any subinfeudation. In the *Red book of the Exchequer* there is a remarkable answer to a writ, which was sent by Henry the Second to one of his tenants in chief, requiring him to certify, how many held under him by military tenures. The words are these: "Know, that I hold of you a very poor fee of one knight; nor have I enfeoffed any other therein, because it is hardly sufficient for me alone; and my father held it in the same manner." Two other knights of the same county, who held in chief of the king, appear, by this record, to have had none who held of them by subinfeudation: but these instances were extraordinary; the far greater number of the military tenants in chief having many subvassals.

See Brady's
Animadver-
sions upon
Jan. Anglor.
Fac. Nov.
p. 187.

"Barony, says Mr. Madox, was knight-service *embaronied*, that is, knight-service enlarged and erected into a barony, or made a barony at its first creation." Every nobleman was, therefore, by tenure a soldier:
nor

nor was his military duty limited only to service *within the kingdom*; but he was obliged to serve *abroad*, at the command of the king, and not singly in his own person, but with such a number of knights as he was able to maintain, by the several fees of which his barony was composed. The spiritual barons indeed, out of a proper regard to their sacred character, were exempted from *personal service*; but they were required to send knights, that is, military tenants, in proportion to the number of the fees they possessed, and even to foreign wars, when summoned by the king: whereas, by the Saxon constitution, their lands had been charged with no military service, except that which was laid on all for the defence of the kingdom, and which we find to have been, generally, but ill performed on their part.

By a law of William the Conqueror, all earls, barons, knights, squires, and *all the freemen of the kingdom*, were ordered to keep themselves well and properly furnished with arms and horses, *for the performance of the duties their tenures required*. The *freemen* here mentioned I understand to have been all who held their lands by any kind of military service; but not to include the tenants by free soccage, or other free tenures which were not of a military nature; as that appellation certainly does in some other ancient laws. There is one of the same king, by which it was enjoined, "that *all freemen* should engage, by a solemn

BOOK II.

See the Appendix to the first volume, & Leg. Gul. I. Wilkins & Lambard.

See Appendix, vol. i. & Wilkins, & Lambard Leg. Gul. 52.

BOOK II. “ confederacy, or affociation, that *both within*
 “ *and without the realm of England, which*
 “ *in ancient times was called the kingdom of*
 “ *Britain*, they would be faithful to King
 “ William, their lord, and assist him *every*
 “ *where*, with all fidelity, to keep his *terri-*
 “ *tories and dignities, and defend them against*
 “ *enemies and foreigners.*” This oath, which
 seems calculated to take in the defence of Wil-
 liam’s *foreign dominions*, was an extension of
 the ancient law or custom of the nation, by
 which all the landholders were bound to the
 defence of *the kingdom*, and laid upon them
 a burthen, which no rules of good policy or
 legal subjection could justify, if we understand
 the term, *freemen*, to signify here any others
 than the military tenants. But, in the case of
 invasions, *the common law of the land* continued
 undoubtedly to oblige, not only those tenants,
 but all the other freeholders, to assist in repel-
 ling and driving out the invaders. During
 the government of the Saxons (if we may be-
 lieve what is said by the compiler of some laws
 ascribed to Edward the Confessor), the militia
 of every county was commanded by an annual
 officer, called *heretoch*, who was chosen into
 that office, by all the freeholders, in the folk-
 mote or county court. Sir H. Spelman sup-
 poses, that, after the Normans came in, this
 command devolved to the earl. And there is
 great reason to think, that the military power
 of every county was principally in the earl,
 during the times of which I write; though it

V. Leges Ed-
wardi Confes.
Wilkins, c.
35. de Here-
tochilis.

V. Glossar.
COMES, p.
141.

was occasionally exercised by the sheriff or BOOK II. viscount. But, whether even the Saxon *here-toch* was not subordinate to the earl, in his military functions, appears to me very doubtful. The great antiquary above-cited is him-
V. Glossar. HERETOCH, p. 288, 289. & Holdes, p. 294.
 self of opinion, that the rank of this officer was inferior, or, at most, equal to that of the sheriff or viscount. And our ancient history shews, that, where the king was not in person at the head of his army, the commander in chief, or general, was almost always an earl, as well during the Saxon government, as for more than a century after that period. But the Saxon earldoms were not *hereditary fiefs*, as they were made by the institutions of William the First. According to the system then established, it seems that, under the earl, or the viscount, the barons, and the inferior military tenants of the king, commanded respectively their several vassals; and, these being also *hereditary chiefs*, the aristocratical power in the military policy of this kingdom was much increased. As, by the Norman establishment, every knight's-fee was required to furnish a horseman, the cavalry produced by these tenures, supposing it compleat, was above sixty thousand; and all these were armed from head to foot in the manner before described. But it must be observed, that there was then a species of soldiery called in the charters and histories of those times *servientes*. Some of these performed their duty on horseback, and others on foot.
See Spelman's Gloss. sub ann. 1173. Ibidem, in Ric. I. p. 749. c. 44.

BOOK II. It likewise appears by the rolls, that in the reign of King Edward the First knights-service was done by the knights themselves, who were summoned, or by two *servientes* in the place of a knight. Another record informs us, that, in the same reign, the bishop of Hereford did his service for five knights-fees; in the king's army of Wales, by two knights, and six esquires (*armigeros*) for the other three fees. From whence it may be inferred, that *servientes* and esquires were synonymous terms. Yet in some other records we find them distinguished; as Mr. Selden has shewn in his very learned treatise on titles of honor. Mr. Petit and Dr. Brady cite a record of the sixth year of King John, wherein it is ordered, that nine knights through all England should find a tenth, well provided with horse and arms for the defence of the kingdom, *and allow him two shillings a day for his wages.* Whereupon the Doctor observes, "that two shillings a day was then equivalent to at least thirty shillings a day now, and therefore he that had this allowance went forth in a good equipage, and maintained without doubt several soldiers, *servientes*, or *esquires*, with it, &c." I likewise find in Fitz-Stephen, a contemporary historian, that in the war of Thoulouse the knights of Becket's household, who were no fewer than seven hundred, received three shillings a day of the money of that country, to provide for their horses and esquires (*ad equos et armigeros*),
Never-

V. Madox,
Baron. l. i.
c. 5. p. 49.

V. Brady's
answer to Pe-
tit, p. 123.

Nevertheless, it is certain, that, in the ordinary **BOOK II.** course, the military tenants were to serve forty days, at their own charges; and, if the service continued longer, it was to be, afterwards, at the charge of the king. By the charter of Henry the First, the demesne lands of all vassals who held by knights service were freed from all gelds and taxes; and the reason given for it is, *that, being eased of this burthen, they might be able and ready to serve the king, and defend his kingdom.* Sir H. Spelman takes notice, "that, according to the old Norman **V. Chart.** *Coutumier*, whoever possesseth a *fief de haubert*, H. I. in Append. "which was a knight's-fee of the highest V. Spelman's "dignity, was bound to serve in the *ban* or Gloss. FEUDUM, HAUBERTICUM, "arriere *ban*, with compleat armour; that is, p. 219. " (says he) with a horse, a coat of mail, a shield, a spear, a sword, and helmet, for the "space of forty days within the limits of the "kingdom; which by succeeding kings was "extended to three months within, and forty "days out of the kingdom." In the second year of King Richard the Second, the commons said, *that they ought not to bear foreign charges.* The king's answer was, "*that Gascony concerned the kingdom of England; for that it was a bulwark to the kingdom of England.*" I do not find that the parliament disputed this point in the reign of Henry the Second; but (to say the truth) it was a question more frequently determined by the humour of the times, than by any fixed rule of law or policy.

Knights-fees were often divided; so that many of the military tenants in chief had but a fourth

See Sir G. Cooke's Argument in the case of ship-money, State Trials, p. 621. Ibid. p. 639. Writ. 15 Johan.

See State Trials, vol. i, p. 588. Sir Edw. Lytton's Argument in the case of ship-money.

BOOK II. a fourth part of such fees; nay, it appears by a record, which I have cited before, that some such tenants, in the reign of Henry the First, had only an eighth part, and one, who was enfeoffed after the death of that king, had only a twentieth. These small tenancies, I presume, arose from the desire of holding in chief of the crown, though by ever so poor a fief, on account of the honour and superior protection annexed to that tenure. A vassal who held by the moiety of a knight's fee was bound to serve but twenty days; and so in proportion. Several tenants were enfeoffed with one or more knights-fees, *and part of another*: which may have happened from the convenience of such *part* being situated near to the lands of which the entire fee or fees consisted.

Archers were drawn from the yeomanry, and seemed to have served on foot, as attendants on the vassals who held by knights-service, and at their charge; or, sometimes, under the pay and at the charge of the king. But though they were accounted the lowest order of military men, they made, for many ages, a very considerable part of the strength of the kingdom; most of the victories won against the French or the Scotch having been principally owing to their valour and skill.

One species of knights-service was *castle-guard*, differing from it in nothing but that whoever held by that tenure performed his service *within the realm*, and *without limitation to any certain term*. Mr. St. John says, in his argument

Lib. Rub.
Scaccarii,
See also Brady's Animad-
versions
upon Jani
Anglor.
Fac. Nov.
p. 185, 186.

See Lyttel-
ton's Tenures,
sect. 112. c. 4.

See Froissard.

See Lyttel-
ton's Tenures
l. ii. sect. 13.
Coke's Insti-
tutes, note to
sect. 3.

argument on the case of ship-money, that the tenants by castle-guard were eleven thousand. BOOK II.
See State

He likewise shews from some records, that the castle of Dover, as being the key of the king-Trials, vol. i.
p. 498.

dom, had near two hundred tenures by castle-guard, besides several more for the keeping it in repair; and that, in time of war, the king used to maintain in that fortress one thousand foot, and one hundred horse. These soldiers, I presume, were over and above the two hundred who were bound by their tenures to defend it, and who, probably, performed their service by a large number of subvassals. The counties of Cumberland, Westmorland, and Northumberland, on account of their neighbourhood to the Scotch, the perpetual enemies to the English, were full of tenures by castle-guard, and likewise of *cornage*, which tenure obliged the tenant to give notice of the enemy's coming into the country, by blowing a horn. Such was the general provision made by the feudal system for the defence of fortified places. About the end of the

eleventh, or the beginning of the twelfth century, a new kind of militia was established in France, for the security of the principal cities. By the charters granted to them communities were erected, which had a power to levy forces; and a determined number of citizen

was required to be enrolled in every parish, and to march under the banner of the church they belonged to, in case of any attack on the territory

V. P. Daniel
Hist. de

France sous
Louis VII.

p. 243, 244.
Hainault

Abregé Chro-
nologique,

t. i. p. 139.
t. ii. p. 751.

752.
P. Dan. Hist.

de la milice
Françoise,

l. iii. c. 3.

BOOK II. territory of the city, and for the repressing of seditions and outrages of all kinds within the limits thereof. These were to be called out at the command of the bishop, or of the chief citizens: but, in extraordinary exigences, when the state was concerned, the king had a power to order all the inhabitants, who were capable of bearing arms, to march in his service: on which account many privileges and franchises were accorded to such corporations by the crown. It likewise appears, that some gentlemen, in the neighbourhood of these cities, incorporated themselves with them, and made a part of their force. Father Daniel observes, that this establishment past from the demesne of the king of France into those of his greatest vassals, the dukes of Burgundy, *the dukes of Normandy*, and several others. I also find, that, before the reign of Stephen, it had been introduced from Normandy into England. For in a passage, of which I took some notice in the history of that reign, mention is made by William of Malmesbury of the *community* of London, and of some barons, *who had been admitted into it a good-while before*, that is, I presume, in the reign of Henry the First. Besides reasons of *police*, and a desire of maintaining the publick tranquillity, this institution had a view to make the town-forces a check on those of the barons. It was a popular militia opposed to the aristocratical. But it does not appear that, in England, the bishops

V. Malmsh.
Hist. nov.
l. ii. sect. 10.
f. 106.

bishops or lower clergy had any power to BOOK II.
order, or call it out.

Some account has already been given in this book of a pecuniary commutation for personal service in foreign wars, called *scutage* or *escuage*, which appears to have been first introduced into England by King Henry the Second. At the beginning, it was only allowed to the spiritual barons, and their military tenants, in a war with the Welsh. But, on the occasion of Henry's expedition against Toulouse, it was further extended to all the inferior tenants in chief, and to almost all the subvassals who held by knights-service; because the inconvenience of going so far from their country would have been to these very grievous. It was afterwards taken in like manner not only for wars beyond the sea, but against Wales or Scotland: neither was it denied to the greater vassals of the crown (as it had been at first), unless by their summons they were expressly commanded to follow the king in person, or held some office by *grand-serjeantry*, which required their attendance. What this tenure was, will here-

after be more fully explained. But, with regard to the liberty of commuting for the duty of personal service by scutage, or escuage, it cannot be denied, that it was a great variation from the first intention and policy of military fiefs, and opened the way to greater in process of time. It appears from the rolls, that, in the ninth year of Edward the Second, some who held by knight-service, not originally of the

V. Trin.

Brev. 9 Edw.

II. Rot. 58.

a. brev. 12

Edw. II. Rot.

76.

Madox's Hi-

story of the

Exchequer, p.

454. c. 16.

BOOK II.

crown, but of an honour or manor escheated to the king, claimed a right to be discharged from serving in person, *being only bound to pay scutage*; which plea was allowed. And Sir Robert Cotton, after relating a summons sent by Richard the Second in the third year of his reign, which commanded that all those who

See Cotton's
answer to the
reasons for
foreign wars,
p. 46, 47.

held by knight-service should properly fit themselves out with horses and arms, in order to attend him in a war, concludes with these words: " But these the courses of elder times
" were about this time much altered ; and the
" king, for the most part, was supplied in his
" wars *by contract with the nobility and gentry,*
" *to serve him, with so many men, and so long,*
" *and at such a rate, as he and they by inden-*
" *tures accorded.*" This alteration, which appears by the evidence of many records, produced *another kind of militia* in England, unknown to the times of which I write. Indeed the practice varied much in different ages ; though it is plain, from our law-books, that the principle of knight-service, due, by the nature of the feudal policy, from all the possessors of military tenures, remained much the same, from the reign of William the First to that of Henry the Seventh ; nay, even till Charles the Second abolished those tenures.

See Bracton,
Fleta, and
Lyttelton's
Tenures.

In the latter part of this history I shall have occasion to mention a new regulation made by Henry the Second, for the better arming of the whole people, except only the slaves,
who

who were accounted no part of the body politic, or civil community. BOOK II.

It cannot be denied that the tenures introduced by the Normans gave much strength to the kingdom. Without the inconvenience, expence, and danger to liberty, attending a *standing army*, forces sufficient to guard every part of the country, and, when occasion required, to serve the crown in foreign wars, were always kept up, on a legal footing, and necessarily connected with the civil constitution. All the gentry were soldiers paid and maintained by the lands they held; as they likewise paid and maintained those freeholders of an inferior rank, who held knights-fees under them. Nor could this strength ever fail, as that of a mercenary or stipendiary army must at some times, by the wealth of the state being consumed and exhausted; but continued as fixed as the lands disposed of in this manner, and ever ready to oppose either foreign invasions or intestine rebellions. I may add too, that it was equally fitted to resist any tyranny in a king, being wholly composed of those men, who, by their property in the realm and their rank in the state, were most interested to guard the liberty of the subject against the crown. But then the great power, which the military tenure gave to the barons, often enabled some ambitious and turbulent spirits unnecessarily to disturb the peace of their country, to throw off all subjection and loyalty to the king, and even to become more insupportable

BOOK II.

able tyrants themselves, within the bounds of their small dominions, than the most absolute princes in monarchical governments; with this difference only, that it was no easy matter for any of them to exercise their tyranny long, without being checked, and brought to justice, by the power of the crown, supported by that of other barons, their peers: whereas, in absolute monarchies, the constitution affords no remedy against the despotism of the prince. On the other hand the force of *union*, in which consists all the energy of monarchical states, was wanting in this, or, at least, was never found in it, but under the government of very able princes. Indeed the whole policy of the military tenures was much better adapted to the purpose for which they originally were formed, viz. to maintain conquests, made in countries not wholly subdued, or exposed by their situation to continual wars, than to procure that *tranquillity*, which is the principal benefit derived to mankind from order and government, and without which no improvement of civil society can be advanced or supported.

If we compare the constitution established here by the Normans with that of the Anglo-Saxons, the greatest difference between them will be found to arise from many estates, which were *alodial*, being made *feudal*, and from others, which approached the nearest to fiefs, and were indeed of a feudal nature, but *not lands of inheritance*, being rendered *hereditary*, and, in consequence of that change, subjected to burthens,

to

V. Spelm. on
Feuds and
Tenures, c. 5.

to which they had not been liable in their former condition. Spelman has proved undeniably, from several charters, that the hereditary estates of the Saxon nobility and gentry, called by him *thane land*, which he speaks of as synonymous to *bocland*, or *charterland*, were alodial, and not subject to any feudal service. But then he owns, that both the greater and lesser Thanes might have, and, in fact, frequently had, other lands of a feudal nature, and holden by military service, yet not like the Norman feuds, being granted only at will, or for a certain number of years, or, at most, for life or lives; in which they resembled the lands of the vulgar, called *folkland*. And such grants were called *benefices*, a term expressive of their nature, which by later usage has been confined to clergymen's livings. These *benefices* were made *hereditary fiefs* under William the Conqueror; and most of the *bocland* was converted into the same kind of tenure. If we consider this change with regard to the possessors of *bocland* alone, it seems very clear, that, abstractedly from the privileges annexed to the possession of feudal lands, they were great losers by it: for, whereas they had before an absolute property in their estates, which they had even a power to dispose of by will, they now held them of the king, or of some *mesne lord* under him, inalienable, and limited to their eldest sons after them; besides the obligation, imposed on them and their heirs, to submit to

BOOK II.

Ibidem, c. 9.

Ibidem, c. 5.

P. 12. c. 10, p. 22.

Ibidem, c. 12.

Ibidem, c. 3.

P. 7 & 9.

Ibidem, c. 5, & 23.

See also Somner 84. post, lib. ii. c. 5.

BOOK II.

certain methods of acknowledging their dependence on the lords of their fiefs, which were very uneasy to them, as will be shewn more particularly hereafter. But, with regard to the possessors of *beneficiary estates*, the change was advantageous: for, however disagreeable those burthens incidental to their new tenure might be, the *perpetuity* of their fiefs, thus acquired and confirmed to them and their families, made them ample amends. When, therefore, the same persons had estates of both kinds, the alteration made in the *bockland* was compensated by the inheritance obtained in the *benefice*: and there is reason to believe that this was the case with many of the English. As for the Normans, or other foreigners who came over with them, they certainly thought it no grievance, to hold the lands, that were so liberally given to them in England, on the same terms as their estates were held by them in Normandy, or other parts of the continent, where the *strict feudal policy* had before taken place. From the reign of Charles the Bald to that of Hugh Capet, the alodial lands, in all the provinces of the French monarchy, had been gradually changed into fiefs, and the benefices, or temporary fiefs, made perpetual. The last of these princes completed this important alteration, by an universal and legal establishment of it, about the year nine hundred and eighty-eight. Even the subvassals, or vavasors, called in French *arriere-vassaux*, obtained the same perpetuity in their feudal estates, as those who held

See the capitularies of Charles the Bald.
See also Poyssseau & Pasquier.

held of the crown. Nor was this concession the mere effect of a weak and timid complaisance in the crown to its vassals, or in those vassals to theirs, as some writers have supposed; but arose at first from a desire of encouraging those, who held by military service, to fight with more alacrity, and hazard their persons more freely, than they would have done, if the consequence of their dying in battle had been the loss of their lands to their families. This gave a beginning to hereditary fiefs; and it was natural, that, when once such grants had been made, they should prevail more and more; other persons, who thought that they had equal pretensions, and of whom the same services were required by their lords, demanding from them the same encouragement, especially on the breaking-out of any great war; and the same reasons of interest induced the lords to comply with such demands. Hugh Capet, who owed his crown to the favour of the nation, could not, with prudence, resume any fiefs belonging to it, which the noble family had retained beyond the original term of their grants (as many had done in the times of his predecessors); nor refuse to put other beneficiaries of the crown on an equal footing with these; nor deny to his vassals the liberty of giving or confirming to those, who held of *them*, as lasting a tenure in their lands, as they themselves had thought it reasonable to demand from the crown, in the estates they held *in chief*. *The mode of the*

V. Craig, Just
Feud. l. i.
tit. 4^a sect. 6.

BOOK II. *times* (as often happens) made *the policy of the times*; and what at first was considered as a *favour*, grew into a *claim*.

From the perpetuity of fiefs, thus established in France, and in many other nations, where the same motives operated both on the kings and the nobles, were naturally derived those feudal rights which produced in Europe a new system of property and of law. It appeared very just, that some compensation should be given to the lord, for losing the power, which he before had enjoyed, to dispose of his lands, on the determination of the grant; and from hence arose the payments made, on the death of the vassal, by the heir, which in the law-term are called *reliefs*. The treatise ascribed to Glanville, and which, I doubt not, was composed by the immediate directions of that great lawyer, who was chief justiciary of England under Henry the Second, tells us, that the relief of a knight's fee was then fixed at a hundred shillings, and of lands held in soccage at a year's value, by the custom of the kingdom: but that, with regard to baronies and to serjeanties, there was no determinate rule of law; those who held by such tenures satisfying the king, for the relief due to him from them, at his discretion.

See Spelman's Gloss.
WARDE.
Craig, de Jure Feud. l. ii.
tit. 20. sect. 3.

The perpetuity given to fiefs produced also the right of *wardship*. For it was thought proper, that, if the heir to a barony or knight's fee was a minor, the lord should have the custody of the lands of his fief, with the profits thereof,

thereof, during the time of the nonage, lest **BOOK II.** they should be endamaged; and also that he might take the necessary care, that the military service, in consideration of which the fief was originally bestowed, should be duly supplied. In the last of these points the interest of the state was equally concerned with that of the lord. And, together with the custody of the lands, that of the person of the minor was assigned to the lord, in order that he might carefully train him up in the knowledge and use of arms; which likewise was a matter of great publick concern. The feudal age of majority for a man who held by knight-service was twenty-one years; because till then he was thought incapable of performing his duty. If the heir to such lands was a female, her lord had the custody of her person and lands till she was fourteen years old; at which time, it was supposed she might have a husband, able to perform the services due for the fief she inherited.

Fortescue de
Laudib. Leg.
Ang. c. 44.
Selden's
notes on
Fortescue.

See Lyttel-
ton's Tenures
l. ii. c. 4.

But these feudal rights, however agreeable to the principles of that policy, were given up in the charter of King Henry the First, by which, if a vassal died, and left a wife and children, the custody both of the lands and children was assigned to the widow, or to the nearest relation. This concession, I presume, was made by that monarch, chiefly to gratify his English subjects, who, not having been used to these customs of the strict feudal policy, were more displeased with them than the

See Charter
of H. I. in
the Appendix.

BOOK II. Normans, who brought them into this kingdom. Nevertheless we are told by Glanville

V. Glanville, (for I will venture to call him the author of
l. ii. c. 9. the above-mentioned treatise) that, in his time,

V. Articuli,
Magnæ
Cartæ et
Magnam
Cartam,
Blackstone's
Edition.

the lord had the custody both of the heir and the fief, but under an obligation not to alienate or waste any part of the lands, and to give an honourable maintenance to the heir, in proportion to the greatness of his inheritance; and also to pay the debts of the deceased, in such measure as the value of the estate and the time of the custody would permit. Nor did the barons, in their demands delivered to King John, desire a restoration of the grant of Henry the First in this instance; but admitted the right of the lord to the custody of the minor's person and lands; which is also confirmed by *Magna Charta*, with only such regulations as were necessary to prevent an abuse of the trust, being nearly the same with those that are mentioned by Glanville. In all probability, some statute, now lost, had been enacted in the reign of King Henry the Second, to give this right to the lord, agreeably to the custom and practice in Normandy, and, indeed, to the clear principles of the feudal policy itself.

V. Glanville, According to Glanville, a female heir,
l. vii. c. 12. though of full age, was to remain in the custody of her lord till her marriage, to which his concurrence and advice were requisite, *because* (says that author), *by the law and custom of the realm, no woman who inherits land can be*

be married, without being disposed of by her lord, or having his consent. By land in this passage he means land that was held by military service: for he had said before, that the heirs of *tenants in soccage* ought to be in the custody of *their nearest relations*. What *soccage tenure* was, will be hereafter explained.

BOOK II.

Ibidem, c. 11.

It is said, in the charter of King Henry the First, that, if any baron, or tenant in chief of the crown, was inclined to give his daughter, or *sister*, or *niece*, or *kinswoman*, in marriage, he was to speak with the king about it, who promised *not to take any thing for his consent*, and not to refuse it, *unless the match proposed was with one of his enemies*.

See the Charter in the Appendix.

It must be understood, that the *sister*, *niece*, or *kinswoman*, here mentioned, was the next heir to the fief; for otherwise it does not appear that, in virtue of any feudal right, the king could be entitled to interfere in her marriage; but in such a case it was thought reasonable that his consent should be asked, not only in a minority, but even in the life-time of the father, or other near kinsman. And the same power that the king had over his tenants, they had legally over theirs. Glanville affirms, "that if any man, having only a daughter, or daughters, to inherit his fief, marries her, or them, in his life-time, without the consent of his lord, he thereby forfeits his fief for ever, according to the law and custom of the kingdom; so that he can cover no part of it, unless by the clemency

V. Craig, l. ii. tit. 21. sect. 4.

V. Glanville, l. vii. c. 12.

BOOK II.

“ of his lord :” for which he gives this reason :
 “ because, as the husband of any female heir
 “ is bound to do homage to the lord of the fief
 “ for his holding, the good-will of the lord,
 “ and his consent to that act, ought first to be
 “ asked, lest he should be compelled to re-
 “ ceive homage for his fief from his enemy, or
 “ from any other improper or unqualified per-
 “ son.” This appears to extend equally to
 all kinds of fiefs for which homage was done,
 as to those that were held by knight-service.
 But it was more peculiarly necessary in the
 latter : *lest* (as a great writer on feudal law has
 expressed it) *the fief, which was given for the*
defence and service of the lord, should be used to
annoy him. And the same reason was appli-
 cable to widows, if they married again. In-
 deed King Henry the First declares in his char-
 ter, that he will give no widow in marriage
 against her own inclination : and the charters
 of King John and Henry the Third forbid the
 forcing of any widow to marry again ; but ob-
 lige her to give security to the king, if she
 holds of him ; or to her lord, if she holds of
 a subject, that she will not marry a second hus-
 band without his consent. Yet it was the
 sense of the law (as we learn from Glanville),
 that an heiress who had once been lawfully mar-
 ried, if she became a widow, was not to re-
 turn into the custody of her lord : though, if
 she made a second marriage, she was under
 the same obligation as before, to ask his con-
 sent. In the charter of King Henry the First

it

See the Char-
 ters of King
 John and
 Henry III. in
 Blackstone's
 edition.

V. Glanville,
 l. vii, c. 12.

it is said, that if, upon the death of one of his barons or other tenant in chief, a daughter is left to inherit the estate, *in disposing of her he will take the advice of his barons.* But it does not appear from Glanville, that *such advice* was thought necessary in the time of Henry the Second: nor is any mention made of it in the articles delivered to King John by the barons, or in the great charter of that prince, or in those of his son. It was indeed an obligation which could not be adhered to without extreme inconvenience; and I doubt not that it had been abrogated by some statute, now lost, before Glanville's book was written. It is remarkable, that, neither in that treatise, nor in the charter of King Henry the First, is it said (as it is in the demands the barons made to King John), that in the marriage of heirs *the advice of their relations ought to be taken*: nor (as it stands in his charter) that, before the marriage shall be contracted, *notice is to be given of it to the kindred of the heir.* But, on the other hand, we do not find in the charter of Henry the First, nor is it mentioned by Glanville, that either the king or the barons claimed a right to interfere in the marriage of *heirs male*, even while under wardship. Indeed the reasons, which are given by Glanville, for that feudal power, in case of female heirs, do not hold in the case of males. Yet it was afterwards thought, that, in regard to the connection between them and their lords, which by writers on the feudal law is considered

See the Article in Blackstone.

V. Craig, de Jure Feud. l. ii. tit. 20. sect. 3. & tit. 21. sect. 2.

BOOK II.

dered as superior even to the nearest relations of blood, the advice and the consent of their lords, in an affair so important as their marriage, ought to be asked; and the rather; as, from the influence of a wife over the mind of her husband, it might naturally be presumed that the interests of the lords was not a little concerned in the matches made by their vassals. It also appears from the great rolls, that even in the reign of Henry the First fines were paid to the king by his male tenants in chief, for leave to marry; and by widows, to be at liberty not to marry for a certain time, or not to marry at all against their liking. This was contrary to his charter; and the same evidences attest, that such fines were paid by widows to Henry the Second, though he had confirmed that charter. Under what colour this was done, I am not able to discover: but the right of widows not to be forced to marry again was reasserted by all the charters of King John and Henry the Third.

See Lyttel-
ton's Tenures,
l. ii. sect. 106.
and notes, &
sect. 109.
See also Craig,
de Jure Feud.
l. ii. tit. 21.
c. 8, 9, 10.
V. Glanville,
l. vii. c. 12

The law was careful to forbid any disparagement in the marriage either of male or female heirs, by which was understood, not only the marrying of them to persons of much inferior birth and condition, or any way infamous; but also to any who were lame, or greatly deformed, or incapable of having children; or who had any bad infirmity of body or mind. Glanville likewise delivers it as a rule of law in his time, that, if a vassal asked his lord's permission to marry his daughter,

ter, being an heiress, to any person, the lord was bound, either to give it, or to shew a just cause for which he ought to refuse it: otherwise she was at liberty to marry herself, even against his will, by the advice of her father, and according to her own inclination. He tells us also, that it was a duty incumbent on the lord, to offer a proper match to a female ward in his custody, as soon as she was of age to marry, and also to pay her a reasonable portion. These regulations, and the profit given, by a feudal custom in these times, to the king and inferior lords, on the marriage of their vassals, conduced to promote propagation and the increase of the people; for it is probable that few remained long unmarried: but great abuses attended this part of the feudal system, which indeed in itself was grievous; and one of the happiest changes made in our constitution, by the wisdom of later times, has been the delivering us from so heavy a yoke, and recovering that independence, with regard to the disposal of our persons in marriage, which our Saxon ancestors had enjoyed; and which, if exercised with a due respect to *parental authority*, is one of the most valuable branches of natural liberty.

Glanville takes notice of only three kinds of *V. Glanville,*
aids, which the feudal lord had a right to de-^{l. ix. c. 8.}
 mand from his vassals. One was, to assist
 him in paying the relief he owed to the king,
 or any other lord of whom he held his estate;
 but

BOOK II. but this was to be done with moderation, according to the greatness of the fiefs and means of the vassals: another was, to contribute towards his expence in making his eldest son a knight; which ceremony was performed with great pomp in those days: and a third was to help him in the charges of marrying his eldest daughter: but this was not to be paid a second time. The first of these feudal dues is abo-

See K. John's
Charter,
Blackstone's
Edition.

lished by king John's *Magna Carta*, as well as all other aids not granted by parliament, except the two last, and one not mentioned by Glanville, viz. an aid from the vassals to pay the ransom of their lord, if he was made a captive. This naturally arose from the principles of the feudal connection: but it appears from Bracton, that, in Henry the Third's time, the others, allowed by the charter of king John, were supposed to be paid by the vassals, rather as marks of good-will and affection to their lords, than as proper concomitants of the service they owed. Glanville, on the contrary, considered them as due by their tenures. But, both by that author, and in the charter, it is said, that they ought to be taken in *reasonable proportions*.

V. Bract. l. ii.
c. 16. sect. 8.

V. Glanville,
l. ix. c. 8.

L. ix. c. 8.

Glanville makes it a question, whether the feudal lord could demand an aid of his tenants for the support of his war? And resolves it by saying, that he could not *distrain* for such aid: but they might *give it as a benevolence*, and out of affection to their lord: whereas he con-
siders

siders the aid *of relief* as a *due*, for which the lord, in virtue of his fief, had a legal right to BOOK II. distrain.

It must be here remarked, that reliefs were only paid by those heirs who were of full age, when they succeeded to their fiefs; not by those who had been under the custody of their lords. And the reason of this was, that the profits of the custody were deemed a sufficient recompense to the lords of those fiefs for renewing them to the heirs of their tenants. Upon the death of a vassal, who held military fees under several lords, reliefs were due to them all from the heir; but the custody of his person belonged to that lord, whose grant was prior to the others. Yet, if it happened that one fief was held of the king, and others of other lords, the custody belonged to the king. And the same rule was observed with regard to the obligation of consulting the lord in the marriage of the ward, not only (says a very able writer on feuds) because the king could have no equal (which is the reason assigned for it by Glanville), but because he is *the most ancient lord of all fiefs*, the original grant and investiture of every fief having been given by *him*. Notice is taken by Glanville, that, in his time, it was usual for the king to commit to others the custody both of the persons and lands of his wards, either under an account to him for their wardships, or without account, in the nature of a *beneficiary grant*. And, undoubtedly, inferior lords did

V. Glanville,

l. ix. c. 4.

V. Cart. John
& Hen. III.in Black-
stone's Edit.
Art. 3.

V. Glanville,

l. vii. c. 10.

V. Craig, l. ii.
tit. 21. sect. 5.

V. Glanville,

l. vii. c. 10.

BOOK II.

See Madox,
c. 10. p. 221.
Hist. of the
Exchequer.

did the same. It likewise appears by the great rolls, that the wardships of the crown were *sold* by King Henry the Second: and mention is made of that practice, without any blame, in the charters of King John and Henry the Third.

See Spelman
on Feuds and
Tenures,
c. 20.

Upon the decease of a vassal the heir was obliged to do homage as soon as he conveniently could; it being necessary, in order to preserve the memory of the tenure, that every new tenant should, at his entry, recognize the interest of the lord in the lands, for fear that, the feud being hereditary, and new heirs continually succeeding to it, they might by degrees forget their duty, subtract their services, and in process of time deny the tenure itself. The lord, on his part, was bound to receive the homage owing to him, before he could be legally entitled, either to a relief, if the heir was of full age, or to the custody of his person and land, if he was a minor; unless such minor was of too tender an age to perform it, or the lord had a good reason to justify his refusal or delay to accept it.

V. Glanville,
liv. c. 4. 6.

V. Bracton,
l. ii. c. 35.

Homage was done by the vassal on his knees, unarmed and bare-headed, and holding both his hands between those of his lord, who was sitting: which ceremonies denoted (according to Bracton), on the part of the lord, protection, defence, and warranty; on the part of the tenant, reverence and subjection. In a statute of the 17th of Edward the

Second

Second there is set forth the form of words to be used by the vassal, when homage was done to a subject. He was to say, "I become your man, from this day forward, of life, limb, and earthly honour: I will be true and faithful to you, and bear to you faith for the lands I hold of you, saving my faith to our lord the king and his heirs:" which agrees with the account given by Glanville of the form that was used in his time. After the vassal had said this, he was to receive a kiss from his lord, and then rising up to take *the oath of fealty* in the following words: "Hear this, my lord; that I will be faithful and loyal to you, and will bear to you faith for the tenements which I hold of you, and loyally will perform to you the customs and services which I owe to you, at the terms assigned, so help me God and his saints." It was a maxim of law, *that homage draws with it fealty*, which likewise was incident to all kinds of tenure, except frankalmoigne. In the year eleven hundred and fifty-two, the Emperor Frederick Barbarossa made a statute, that in every oath of fealty taken to any of his subjects, there should be a reserve of the faith due to him and his successors; which immediately was adopted by several other nations, where the feudal law was in use, with regard to their sovereigns; and the omission of that reserve was punished in England by a judicial determination under Edward the First.

BOOK II.

V. Glanville,
l. ix. c. i.V. Spelman's
Gloss.

HOMAGIUM.

Ibid. FIDE-

LITAS.

Statut. 17

Edw. II.

V. Radovic.
l. vii. c. 2.See Spelman's
Gloss. FIDE-
LITAS.Hale's Hist.
of the pleas
of the crown,
c. 10. p. 67.
Coke upon
Lyttel. p. 65.

Homage

BOOK II. Homage done to the king was called *liege*

See Spelman's *homage*, and was accompanied with the oath
Gloss. Ho- of allegiance expressed in these words: "I

MAGIUM. "become your liege man, of life and limb,

See also Fle- "and of earthly worship; and faith and troth

ta, l. iii. c. 16. sect. 21. "I shall bear unto you, to live and die against

Hale's Hist. "all manner of folk: so help me God."

of the pleas The ceremony was the same as in doing ordi-

of the crown, nary homage to a mesne lord. It has been

c. 10. p. 70. noted, in a former part of this work, that An-

selm, archbishop of Canterbury, refused to pay

homage to King Henry the First, because

some of the popes, and certain councils held

under their influence, had forbidden ecclesi-

astics to make such an acknowledgement of

their dependance on princes. In one of the

epistles of that prelate we find this expression,

V. Anselm. *I will not become the man of any mortal, nor*

Epist. ad Er- *swear fealty to any*; which resolution he was

nulf, priorem supported in by all the strength of the papacy;

but, after a long and hard contest, Pope Pas-

chal the Second allowed *the bishops elect* to do

homage, and take the oath of fealty, *before*

they were consecrated. This was confirmed

V. Glanville, by the constitutions of Clarendon, of which

l. ix. c. 1. a particular account will be given hereafter:

and from the words of Glanville it appears,

that about the end of Henry the Second's reign

homage was accordingly done by *bishops elect*:

but he tells us, that, *after they were consecrated*,

they took the oath of fealty. This was a

material difference from what had been settled

by

by the constitutions of Clarendon; and it is surprising that we have no account of it in the history of the times. Nor is any notice taken, in Glanville's treatise, that, by those constitutions, in the oath of *the bishop elect*, a clause *saving his order* was allowed to be inserted; which surely was a reserve of a very dangerous nature. It seems to have crept in during the reign of King Stephen, when many other such concessions were made to the church; for no trace of it, appears under King Henry the First. One cannot but wonder that a legal sanction should have been given to it at Clarendon by Henry the Second. In the course of the dispute between that monarch and Becket, we find the latter making use of it to justify his own conduct; and indeed there was no obligation, contracted by the oath, which might not be eluded and canceled, according to the doctrines of Rome, by means of that clause. Whether it remained in the oath of fealty *taken after consecration*, Glanville does not inform us. Sir Thomas Lyttelton says, in his book of Tenures, "that if an abbot, or
 " a prior, or other man of religion, shall do
 " homage to his lord, he shall not say, *I be-*
 " *come your man, &c.* for that he has professed
 " himself to be only *the man of God*; but he
 " shall say thus, *I do homage unto you, and to*
 " *you I shall be true and faithful, and faith to*
 " *you bear, for the tenements which I hold of*
 " *you, saving the faith which I owe unto our*
 " lord

BOOK II. "*lord the king.*" This regards only homage to inferior lords, who were subjects: but the reason given by Lyttelton, which is the same with that on which Anselm grounds his opposition, extends to liege homage. Yet I find no mention in Glanville of this alteration.

V. Ingulph.

p. 79.

Flor. Wigorn.

& Sim. Du-

nelm. sub

ann. 1086.

Chron.

Saxon. sub

ann. 1085.

H. Huntingd.

& Hoveden,

subann. 1086.

V. Du Cange

Dissert. 13,

14. & Nouvel

Abregé

Chron. de

l'Histoire de

France, sub

ann. 1269,

1270.

We are assured by contemporary writers of the greatest authority, that, in the reign of William the Conqueror, liege homage was done, and fealty was sworn to that king, not only by his own immediate tenants, but all the considerable subvassals: which is a remarkable thing; because, in France and some other countries, it was understood that the feudal law forbid the subvassals to do homage or swear fealty, on account of their fiefs, to any but those of whom they immediately held them.

The practice of England in this respect was more agreeable to good policy; and very proper to keep up in the minds of the inferior orders of freemen a sense of the duty they owed to their sovereign: for in those days it often happened, that, as in their religion, so in their government, the *supreme power* was forgotten, and the vulgar worship was paid to the *middle powers* alone. It also appears from the words of William of Malmshury, that *homage was done and fealty sworn to the heir apparent of the crown*, in the reign of King Henry the First, *by all the freemen of England and Normandy, of whatever order or rank they were, and to whatever lord they were vassals.* Yet

V. Malmsh.

de Hen. I.

l. v. f. 93.

it is not easy to conceive how this could be performed, unless we understand these words with some restrictions, as meaning only the most considerable persons in all the orders of freemen. BOOK II

Glanville tells us, that women could take the oath of fealty, but could not do homage; and that, if they were married, their husbands were to do homage for them. These points of ceremony being important in the law of those times, though they may appear uninteresting at present, I have thought it necessary to give this short account of them, from the most authentic writers. V. Glanville, l. ix. c. i.

It may justly be said, to the honour of the whole feudal system, that all the duties of it were built on the noblest foundations, viz. *bounty*, and *gratitude*; *bounty* in the lord who bestowed the fief, and *gratitude* in the vassal who held it by his grant. From these two principles arose all the connection between them; and they are the best principles in human nature. When estates in land were bestowed as *gifts* during pleasure, or as *benefices* during life, in the original and infant state of this system, nothing could be more simple than the obligations resulting from such grants: but, when they were made *hereditary fiefs*, the laws and customs relating to them became more complex, though founded upon the same reasons. As the *property* still remained in those who granted *these fiefs*, and in

I 2 their

BOOK II. *their heirs* after them, there could not be in the *vassals* any power to *alienate*, *mortgage*, or *sell* them, or to *alter the course of hereditary succession*, without leave of their lords; and the same restraints were reciprocally laid on the lords, because *the use and profits* of the feudal estates *belonged to the vassals*. Yet Glanville says, that, in his time, every freeman, possessed of land, might give *a part of it* with his daughter, or any other woman, as a marriage portion; or to any person as a reward for services done him; or to a religious house or church, if the gift was made in his life-time, and with the proper forms of livery and seizin, and *in a reasonable proportion*. But if any such donation was made on a death-bed, it was not valid without the consent of the heir. Such consent was also required to enable a man, who had several married sons, to give away, even in his life-time, any part of the heritage to his youngest son: for which Glanville assigns this reason, that fathers commonly bear a greater affection to their youngest son than their eldest, which might cause them to disinherit the eldest, if that partiality were not restrained. A man, who had no estate of inheritance, but, only a purchase, might dispose of the whole of that purchase to whom he pleased, by a gift made in his life-time, if he had no child; but, if he had one, he could only dispose of a part; nor could he bequeath it by will, tho' he had no child: *because* (says Glanville) *God only can make an heir*. If a man had

V. Glanville,
l. vii. c. i.

L. vii. c. i.

had both land of inheritance and a purchase, BOOK II.
 he might, in his life-time, give away either a
 part or the whole of his purchase, without
 restraint, and a reasonable part of the inheri-
 tance also, over and above the other dona-
 tion.

Fiefs of all kinds reverted to the lords, if L. vii. c. 17.
 the tenants deceased without heirs; which de-
 termination or extinction of the original grant
 was called an *escheat*. In case there was any L. vii. c. 9.
 doubt whether the heir was of age, the lord had
 the custody both of his person and fief, till that
 doubt was decided. And, by a parity of rea-
 son, if it was questioned who had a right to
 inherit any fief, the lord retained it in his hands
 while the suit was depending, as a *temporary*
escheat, according to Glanville. But if no- V. Glanville,
 body appeared, to lay claim to it, as the next l. vii. c. 17.
 heir, then it remained a *perpetual escheat* to the
 lord, and he had an absolute liberty to dispose
 of it, *as of his own*. There was also another
 kind of escheat, which was not accidental,
 but penal. The fief returned to the lord, if
 the vassal refused to perform any of the duties
 required of him by law in virtue of his tenure,
 or would not acknowledge that tenure, or dis-
 membered the estate, or greatly impaired it,
 or committed any act of grievous injury or of-
 fence against his lord. The same forfeiture
 was incurred by a military tenant, who forsook
 his lord in a fight; and if, besides his fief, he
 had any allodial land, it was forfeited to the
 king by the *common law* of England. In the V. Leg. Ina
case c. 52.

BOOK II. case of high treason, the land, to whatever lord it belonged, was forfeited to the crown, both by the Saxon and Norman laws. Glanville likewise informs us, that a tenant in chief of the crown, convicted of felony, forfeited thereby to the king not only his land, but all his goods and chattels, in whatever hands they were found; nor could they be ever recovered by any heir. The same author says, that, if an outlaw, or convicted felon, held of any other lord than of the king, all his moveables were the king's: and the land remained for one year in the king's hands, but then reverted to the lord; yet, not without the subversion of the houses upon it, and rooting up of the trees. The reason of this was a supposition, that the lord, of whom the felon held, was in some degree culpable, for want of a proper care in the choice of his tenant; and whatever disturbed the publick peace was an injury to the king. Nevertheless Glanville tells us, that if an outlaw or convicted felon, who held by mesne tenure, received the king's pardon, neither he nor his heirs could, in virtue of that pardon, recover the land, unless by the mercy and favour of his lord, to whom it escheated; because the king's mercy ought not to prejudice the right of another. He adds too, that, in general, if any subvassal did or said any thing, for which he lost his inheritance by judgement of law, it returned as an escheat to the lord of the fief. One cause of forfeiture, which he mentions, deserves a particular notice. If a female

Leg. Canut.
Spelman on
Feuds and Te-
nures, c. 23.
V. Glanville,
L. vii. c. 17.

L. vii. c. 17.

female heir, being a ward in custody of her lord, was guilty of incontinence, her estate became, by that offence, an escheat to her lord. And, when a fief was divided between several sisters, if it was proved that any of them had violated their chastity while they were under the custody of their lord, the persons so offending incurred by it a forfeiture of their part of their inheritance to the innocent sister or sisters; but, if all had so offended, the whole escheated to the lord.

This was a severe punishment for the frailty of a single woman, and without example in other laws: but it undoubtedly arose, not so much from a rigorous sense of the heinousness of the fault, as from the notion of an advantage due to the lord from the marriage of his ward, which he probably might be deprived of by her being dishonoured. For Glanville declares, that this forfeiture did not extend to incontinent widows, if they had once been lawfully married; nor disinherit the child of a married woman who broke her conjugal faith; because a son born in wedlock is always presumed a lawful heir. But there may have been another reason for the exempting of widows and wives from this penalty, viz. that, they not being under the custody of their lords, their continence was no breach of the duty and reverence due from a vassal; any offence against which was, in the sense of the feudal law, a most grievous crime; gratitude in the vassal for the obligation conferred on

BOOK II.

V. Craig, de
Jure Feud.
l. iii. tit. 6.
sect. 12. 14.

his ancestor, and transmitted to him together with the fief, by the original grant thereof, being (as I have before observed) one main foundation on which that whole system was erected. Yet we are told by a feudal lawyer of the greatest authority, that the fief was not forfeited, in any case whatsoever, by the vassal's offence against his lord, if the lord had given occasion for it by a prior offence, or if each had offended against the other at the same time; because (says he) it would have been very unjust, that the lord's condition should be mended in consequence of a fault, which he himself had either caused, or shared in; and it was a general maxim of the feudal law, that a forfeiture of the property of the lord in the fief, and of all his dominion over his vassal, was as necessary an effect of any great breach or neglect of the duty which he owed to his vassal, as the forfeiture of the fief was of a similar crime or neglect in the vassal. Indeed this principle, which is so consonant to natural equity and natural liberty, was the cornerstone of the whole policy settled in England by the Normans. So that our kings, considered as feudal lords of this kingdom, were bound no less to protect their vassals in all their just rights and privileges, than their vassals were to serve them; and a failure, on either side, in these reciprocal duties, destroyed the connexion, and dissolved the obligations of the party offended. The inferior vassals, in all degrees of subinfeudation, were likewise,
by

by virtue of the above-mentioned maxim, entirely freed from the bond of their homage and fealty to their respective lords, if these did not acquit themselves of what they owed to them, agreeably to the nature and conditions of their original compact. It is therefore very apparent, that the spirit of this system was most abhorrent from tyranny, and that the plan of it, in all its several parts, was designed as much to resist any oppressive exertion of power within, as any attacks from foreign enemies.

Another great benefit, arising from this plan, was *the uniting of power to property*, which is the surest basis upon which all liberty stands. And as *property* in England, by degrees, diffused itself wider, from the alterations that were made in those parts of the feudal law which had confined it too much, *the power united to it* extended itself further, and produced that comprehensive system of freedom which the whole nation enjoys under our present constitution.

Originally all *proper feuds*, that is, all of a *military nature*, descended, in equal proportions, to all the sons of a vassal, but never to daughters. This exclusion of females had been taken off in most countries, before the Normans came hither: but whether the equal division of all military fiefs continued after that time, and when it absolutely ceased, is not very clear. The impartiality of them is ascribed, by many writers, to a constitution made by the emperor Frederick Barbarossa in

the

V. Constituciones Feudorum, l. i. tit. i. & 8. l. ii. tit. 11.

BOOK II.

the year eleven hundred and fifty-two. But earldoms and baronies, which that ordinance chiefly relates to, had before been indivisible, both in England and in France, except in the case of a baron leaving several daughters, and no son, at his death. I should therefore suppose that the custom of preserving knights-fees undivided in the course of descent, which seemed necessary to enable the military tenant to perform his honourable service with the requisite dignity, began to-prevail among the English some time before it was settled by law in the empire. And together with that was introduced *the right of primogeniture* in feudal successions. For when, in order to preserve the tenure entire, only one son could take it, the eldest was preferred, as soonest able to perform the duties of the fee, and most naturally coming into the place of his father. Certain it is, that, when Glanville's treatise was written, it was the established law of England, that, in a military fief, the eldest son should succeed to the whole inheritance. Yet it appears from records, that men frequently held by parts of a knight's-fee: but such divisions either arose from marriages with the daughters of a military tenant who had no son and several daughters; or were made by enfeoffments, and not in virtue of the rule and course of succession. Lands held *in fee soccage* were equally divided among all the sons, unless they were such as had been impartible *by ancient custom*; of which some went to the *eldest* son, and others to the *second*.

V. Glanville,
l. vii. c. 3.

Glanville

Glanville says, that, in all estates, of what nature soever, if an only daughter was left, she inherited the whole land; but, if there were more, it was equally parted among them, even in military fiefs; with this distinction alone, that the *capital messuage* always went to the eldest; which was likewise observed when a division was made of soccage lands among several sons. He remarks, that if any one of the brothers or sisters, who had been sharers in an inheritance, died without issue, the portion of the deceased was again divided among the survivors. Upon the division of a fief among several daughters, the husband of the eldest was to do homage for the whole, and the younger were to perform the services due to their lord, by his or her hands. But the heirs of these, even as far as the third generation inclusively, were under an obligation of doing homage, and paying reliefs for the lands they held, to the heir of the eldest sister. If a man had several wives, and daughters by all, and by the last an only son, that son would inherit the whole estate of his father: because (says Glanville) it is a general rule of law, that no woman can ever share with a man in any inheritance, unless, perhaps, by a special custom, in particular towns, confirmed by long usage. In the course of succession the lineal descendants were preferred to collaterals. But Glanville speaks of it as a point very doubtful in his time, whether, upon the death of a man leaving issue a younger son, and a grand-

BOOK. II.

C. 3. ut su-

præ.

V. Glanville,

l. vii. c. 3.

BOOK II.

See Essays
upon several
subjects con-
cerning British
Antiq. p. 138.

V. Glanville,
l. vii. c. 3.

V. Glanville,
l. vii. c. 3.

V. Mag. Rot.
10 Joan. Reg.
Rot. 11. 6.
Dorset &
Somerset.
See also en-
quiry into the
manner of
creating Peers,
p. 5.

grandson by his elder son, the inheritance ought to go to the son or to the grandson. And it is justly observed by a fine writer, in a learned treatise lately published on British Antiquities, that there is no question in law which has afforded a greater field, not only for law-suits, but for bloody and cruel wars. Glanville decides it thus, " That the grandson by the elder son should be preferred to the younger son, if the elder had not been *foris-familiated* by the grandfather; which term of law he explains to mean an assignment made by the grandfather, during his life-time, of part of his land to his eldest son, and seisin thereof given to him, at his own request and desire; it being understood that such assignment would bar any claim, in the heirs of the person who took it, to the rest of the inheritance. But if a vassal's eldest son had done homage to his lord, of whom the estate was immediately held, for his paternal inheritance, it was clear, according to Glanville, that, in case he died before his father, a son left by him would succeed to the estate in preference to an uncle. Nevertheless, there is among the records in the Exchequer a remarkable instance of a preference given to a son by a second wife before a son by a first wife, in the succession to a barony, by King Henry the Second; *because he thought the younger brother a better soldier than the elder.* This seems to contradict what is affirmed by Glanville, concerning the right of the eldest son to succeed

to the whole in military fiefs; and to have been a remainder of the ancient feudal law, which, on the death of a vassal leaving several sons, gave a power to the lord of the fief to confer it on any one of those sons, according to his own pleasure. But it may be presumed that such instances rarely occurred, and that the right of primogeniture in military fiefs soon became universal, as we find that by degrees it grew to prevail even in lands held by soccage tenures. Glanville says, that no bastard could lawfully inherit: but the bastardy was to be proved in the spiritual court. He also informs us, that a question arose in his time, whether a son, begotten, or born, before marriage, could, by the subsequent marriage of his parents, acquire a right to inherit; and he declares, that, although by the canons of the church and Roman laws, such a son would be esteemed a legitimate heir, *he could in no wise be maintained in the inheritance by the law and custom of England*; but, in case of a dispute concerning the fact, it was to be sent, by the king's writ, to the spiritual court, and tried before the ecclesiastical judge, who was to acquaint the king or his justiciary with the judgement thereupon, according to which the inheritance was to be either adjudged or denied to the son, by the judgement of the king's court.

This decision of Glanville is very-remarkable; as it shews the entire independance of the law of England on the canon and civil laws

BOOK II. in his time. The same author says, that a widow was entitled to a third part of the land for her dower, in every freehold possessed by her husband at the time of their marriage, unless he had assigned to her a lesser portion of it, at the door of the church, when they were going to be married. But if he had given a greater, it was to be reduced to that, by the sheriff of the county, upon the king's writ, which the heir was entitled to demand. In dividing the land, *the capital messuage* was always excepted, and kept entire to the heir; as was likewise the *head manor*, in case the freehold contained more manors than one. It will not be necessary to enumerate here all the other cases and points of law relating to dower, which are mentioned by Glanville; but there is one which seems to merit a particular notice. He tells us, "that in consequence of a divorce on account of too near a relation between the parties, though the wife lost her claim of dower, yet, by the law of the realm, her children could inherit, and succeed to their father by hereditary right." As such a separation supposed a nullity in the marriage, the children must, in strictness, have been bastardised by it; but as the canonical prohibitions extended so far, that divorces on this account very frequently happened, after a cohabitation of many years in a state of wedlock supposed lawful, there was much humanity and equity in this law.

The

The rules of succession in earldoms and baronies were the same, during these times, as in other estates held by military service. The lands annexed to those dignities could not be divided, except when it happened that an earl, or baron, at his death, left no issue male, and more than one daughter: but by such partitions it came to pass, in process of time, that some baronies were split into very small parts. Thus we find, by a record, that in the eighteenth year of King Richard the Second, Walter de Ramesey, knight, acknowledged before the barons of the Exchequer, that he held certain lands of the king in chief by the service of *the hundredth part of a barony*, viz. the barony of Byset, which, in the reign of Edward the First, had been divided among three daughters, and then subdivided into other smaller portions. But in the times from the accession of William the First, to the death of Henry the Second, I find none divided into more than *three parts*.

In all these partitions the relief of the tenant was proportioned to the quantity held. It appears, that in the reign of Henry the Second some lands were taken out of the barony, or *honor*, of Wallingford, and granted to Geoffrey, one of the king's natural sons, by writ of Ranulf de Glanville, justiciary of the realm. And, in the same reign, Earl John granted a manor belonging to the *honor* of Gloucester to John la Warre, which he and his heirs

See Madox's
Baron. c. 3.

V. Madox,
ibidem.

BOOK II. heirs were to hold of that prince and his heirs by the service of *half a knight*.

V. Madox,
ibidem.

These were the principal alterations, introduced by the Normans, into the laws of property in this kingdom, till after the death of Henry the Second.

It seems a wonderful thing, that any freeholders possessed of alodial estates should ever have been willing to convert them into fiefs, subject to the services, burthens, and entails abovementioned! Yet it is certain that, in fact, such alterations were desired. The reasons given for it are these. The possessors of fiefs had several privileges, which other free-men had not: a higher value was set on their persons; the compositions for injuries done to them were greater; which was an important distinction, when most offences were punished by pecuniary fines according to rates ascertained and fixed by law: and, what seems to have weighed more than any other reasons, they who held by knight-service were exempted from *tallage* and many other impositions, which fell heavy on the possessors of alodial estates, I may add, that the near connexion contracted with the king by feudal tenures in chief, a connexion exceeding that of common allegiance, must naturally have been deemed a great advantage; and particularly, as the being invested with a military fief implied an honourable opinion in the sovereign of the valour of the feudatory. Nor was the service required,

V. Montesquieu de l'Esprit des Loix, l. xxxi. c. 7.

required, in return for such a fief, then ac-
 counted so burthensome, as at present it may BOOK II.
 seem; the martial spirit, which prevailed
 among all ranks of men, but more especially
 among the gentry, recommending to them
 an engagement, which gave them occasions of
 increasing their reputations and fortunes.
 The same reasons, in a lower degree, induced
 the inferior freeholders to connect themselves
 with those of a higher dignity and condition,
 by the mutual bond of feudal tenure. Lastly,
 the fashion of the times did, in this in-
 stance, as in others, incline the minds of men
 rather to look at the benefits, than to con-
 sider the inconveniences attending that state
 which resulted from such contracts. But it
 must be observed that, in England, the ancient
 customs of the nation made more resistance to
 this system, than appears to have been op-
 posed to it in other parts of Europe, or even
 in Scotland; and the continued attachment to
 those customs had the effect of correcting and
 mitigating the rigour of the feudal laws in
 this kingdom, so as always to temper, and at
 last to abolish, whatever in them was oppres-
 sive, or contrary to good government and ge-
 neral freedom.

Baronies were originally created by feoff-
 ment. Mr. Madox says truly, "that no
 "man, or number of men, without the king,
 "could ever make an earl, or baron. Every
 "honor originally passed from the king, and
 "upon every change, by death or otherwise,

BOOK II.

“ returned to the king again, and remained
 “ in his hand until he commanded seisin of
 “ it to be delivered to his homager, according
 “ to the custom of noble fiefs. Yet it must
 be understood, that the honor, or barony, so
 created by the crown, or so delivered back
 again out of the hands of the king, was an-
 nexed to certain lands, which were composed of
 knights-fees, and held of the crown by knight-
 service. For, till long after these times, all ba-
 ronies were *territorial*, and possessed by *tenure*
 alone, not by *writ* or by *patent*.

See the Con-
 stitutions of
 Clarendon.

Besides the military service, which every
 baron was obliged to in virtue of his fief, he
 was also bound to attend the king in his par-
 liament and supreme court of justice, to assist
 in his judgements, and give him faithful coun-
 sel, in all matters concerning the dignity of his
 crown and the good of his realm. But, al-
 though this was one of the feudal duties an-
 nexed to baronial lands in this kingdom, by the
 introduction of those tenures which were deri-
 ved to us from Normandy, yet the attendance
 of the nobility in parliamentary meetings had
 an origin much more ancient than the Norman
 government here, being as old as the English
 monarchy, and the birth-right of the chief
 men of the Anglo-Saxon nation, even from
 the first settlements they made in Great-Bri-
 tain; as it had been in the countries from
 whence they came.

It appears that baronies differed greatly in
 the number of knights-fees whereof they
 consisted.

consisted. One of the smallest, of which I find **BOOK II.**
any record, is that of Hwayton in Northum- See Dugdale's
berland, which Richard de Cramavil held of Baron. i. 107.
King John by the service of three knights.
The same man held another, which had be-
longing to it no less than sixty knights-fees,
viz. the honor of Tickill. As, therefore,
it was not the possession of many knights-fees
which constituted a baron, so neither was it
holding in chief of the king. For Mr. Madox,
in his history of the Exchequer, gives us the See Madox's
plea of Thomas de Furnival; who, being Hist. of the
amerced as a baron, said *he was no baron*, Exchequer,
though he acknowledged that he held the manor c. 14. p. 370.
of Sheffield in chief of the king. It likewise
appears that, in the thirteenth year of Henry Ibidem, c. 10.
the Third, John de Baliol was charged with p. 218.
a hundred and fifty pounds, as the relief for
thirty knights-fees held by his father of the
king, viz. five pounds for each fee: whereas, if
he had held those fees as a barony, he would
have paid for the whole, collectively, but one
hundred pounds. Nevertheless he had a barony,
viz. that of Biwel in Northumberland, which
he held by the service of five knights-fees, and
of finding thirty soldiers for the guard of New-
castle. He also held the lordship of Hiche as
an augmentation of his barony, by the gift of
King Henry the Second to his grandfather,
and by the service of two knights-fees. In the
reign of King John several manors were held
of the crown by the service of one knight's-fee
for each. Sir William Dugdale mentions three See Dugdale's
so held by one man. But most baronies, if not Baronage,

BOOK II. all, consisted, in the times of Henry the Second and his four predecessors, of more than one manor.

V. Spelman's
Gloss. Ho.
NOR.

Every earl had a barony annexed to his earldom; and, as the relief of an earl appears to have been the same with that of a baron, viz. one hundred pounds, it may be supposed that he paid it on account of his barony, which was a land-estate, and not of his earldom, which was an office. This was a high fine for the smaller baronies, being equivalent to at least fifteen hundred pounds in these days. It seems surprising, that, as baronies differed so much in the number of knights-fees whereof they consisted, the charters of king John and Henry the Third should establish no difference in the reliefs they were charged with: but from hence it seems probable, that even the least were of such value, as to be able to bear that charge, without any grievous hardship on the possessors. And, perhaps, the consideration of this inequality may have been one of the reasons, which induced the legislature, under Henry the Second, to leave these payments discretionary and under no certain rule; to the intent that the crown might make the proper difference in case of the poorer barons: which did well, while the discretion was favourably used; but it was afterwards found more prudent to limit the sum to one hundred pounds.

See Hist. of
the Excheq.
c. 10. p. 217.
220.

If two or more baronies happened to be vested in the same man, they did not consolidate in his person, but he held them distinct, and

and was chargeable with a separate relief for each barony; as appears by the rolls in the case of the earl of Gloucester, who in the second year of King Henry the Third paid a hundred pounds relief for the honor of Gloucester, a hundred pounds for the honor of Clare, a hundred pounds for the honor of St. Hilary, and fifty pounds for the moiety of earl Giffard's honor.

The grants made by William the Conqueror to some of his barons, but more especially to his earls, were excessively great. For instance, to Geoffry bishop of Constance he gave two hundred and eighty manors in England: to Ranulf de Baynard eighty-five, and to Roger de Busli a hundred and forty-nine. Odo bishop of Bayeux, whom he made earl of Kent, had in that county, and in several others, four hundred and thirty-nine lordships. Robert earl of Mortagne, on whom he bestowed the earldom of Cornwall, had, in that and other counties, seven hundred and thirty-three manors. The honor of Richmond in Yorkshire had a hundred and sixty-six lordships; besides which, the earl possessed, by the gift of the king, his father-in-law, two hundred and seventy-six in other parts of the kingdom. The honor of the earl of Clare comprised a hundred and thirty-one fees of the old feoffment, that is, of which the earl's ancestors had been enfeoffed before the death of King Henry the First: and to these were

V. Ordericus
Vital. p. 523.

See Domesday Book in the several Counties, and Brady's Hist. W. I. p. 198, 199, 200.

V. Madox's Baron. c. 5. Hist. of the Exchequer, p. 398.

BOOK II. added nine fees, and the fourth part of a fee, *of the new feoffment.*

V. Ord. Vital.

l. xi. p. 804.

Ordericus Vitalis says, in his history, that William of Warren complained to Robert duke of Normandy, the eldest son of the Conqueror, that he had suffered a great loss for his sake, by losing the earldom of Surrey, which produced to him annually *a thousand pounds of silver*. The greatest part of this income must have been drawn from the barony annexed to the earldom; though the third part of the profits arising to the crown from the pleas of the county court were given to the earl. For it appears by the rolls, that, in the sixth year of the reign of King Henry the Second, the *third penny* of Essex was but forty pounds ten shillings and ten pence; of Hereford thirty-three pounds one shilling and eight pence; and, in the sixteenth year of that reign, the earl of Norfolk received, on account of this perquisite, but sixteen pounds thirteen shillings and fourpence, for a half-yearly payment. It varied indeed a little in different years, unless where the revenue of the county was farmed at a certain sum by the sheriff. But there seems something extraordinary in the value that was set by William of Warren upon his earldom of Surrey; for by the accounts in the Exchequer we find, that much less was taken by King Henry the Second for the farms of other earldoms escheated to the crown. It must indeed be supposed, that the farmers had good bargains,

See Madox's
Baronia, l. ii.
c. i, p. 139.
Magn. Rot.
6 H. II.

Ibidem, Mag.
Rot. 16
Hen. II.

See Madox's
Baronia, l. i.
p. 72.
Magn. Rot.
H. II. Rot.
5, 6.

bargains, and did not usually pay so much to BOOK II.
the king in their rent, as the earl received from
the earldom; because some profit was allowed
them in return for their trouble. But if we
value the English earldoms, one with another,
at only half of what we are told the earldom
of Surrey produced, that moiety, being equi-
valent, on the lowest computation, to an in-
come of seven thousand five hundred pounds
in these days, was in itself no mean provision
for supporting even the highest degree of nobi-
lity: and we then had no higher. Yet this
was not all the wealth of the English earls in
that age. Most, if not all of them, had, ex-
clusive of their earldoms, and of the baronies
annexed to them, many more baronies,
manors, and lordships, in other parts of the
kingdom. Among the Saxons it was usual
for many earldoms to be conferred on the
same person.

In the reign of Edward the Confessor, we V. Flor. Wig.
find that Godwin was earl of Kent, of Sus- sub ann.
sex, and of all the West-Saxon counties. His 1051.
eldest son, Swain, was, at the same time, earl Spelman's
of Oxfordshire, Gloucestershire, Herefordshire, Gloss. Dux,
Somerfethshire, and Berkshire; and his second P. 190.
son, Harold, of Essex, Huntingdonshire, Cam-
bridgeshire, Norfolk, and Suffolk. All this
power in one family must necessarily break the
balance of the state, and establish in it a kind
of oligarchy, as it appears that it did, during
the greatest part of that reign. But the Saxon
earldoms were not hereditary; for, although

BOOK II. they were sometimes permitted to descend from father to son, it was not by any right, or claim of inheritance, but only by the indulgence and favour of the king. In the reign of William the Conqueror, all the earldoms of England, as well as the baronies, being rendered hereditary, and descending even to minors, the earls became more independent of the crown; and a more complete aristocracy was thereby established: but, happily, by their number, they were a check on each other; for it rarely chanced that, either by marriage, or the course of descent, more than two earldoms were united in the same person; and the power of the greater barons was little inferior to that of the earls. Mr. Selden, in his learned treatise on titles of Honor, has laboured much to prove, that the earls were not, in the Norman policy, as they appear to have been during the Saxon, *governors of the counties under the king*. But, though several parts of the business of the crown, and more particularly all that concerned the revenue, were administered by the sheriffs, yet it seems clear enough, that the earls were the chief officers under the crown in the two highest trusts, viz. *the judicature of the county, and the command of the military force thereof*, after the Normans came in, as well as before. Indeed, there is reason to think, that in process of time, and, perhaps, as early as the reign of King Henry the Second, they grew neglectful of their duty

Par. ii. c. 5.
sect. 12.

duty in their several county-courts: so that BOOK II.
generally the sheriffs presided there in their
stead, though *not deputies under them*, but *of-*
ficers of the crown. Yet they continued long
afterwards to receive the third penny out of
the pleas in those courts, or a certain sum in
lieu thereof, which Sir H. Spelman considers V. Gloss. Co.
as *the salary of their office*. And of their right NES, p. 141.
to command the military force belonging to
their counties, no light proof may be drawn
from the appellations of *dux* and *consul* given
to them in the Latin histories of those times.
The form of girding them with a sword, when See Titles of
they were invested with their earldoms, was Honor, par.
likewise strongly expressive of a military com- ii. c. 5.
mission appertaining to the office and dignity of sect. 1, 3.
an earl. But it must be remarked, that the
command of *the provincial militia* was different
from that which the Norman earls were en-
titled to over their own immediate vassals; the
latter being feudal and territorial; whereas
the former was derived from the ancient right
of their offices, and seems to have been of the
nature of *a lieutenancy in the counties under the*
crown.

The number of earls was determined by the
number of counties over which they presided:
so that the king could not regularly create any
more: but there might be fewer, from the same V. Malmfb.
person having two or more earldoms. During Hist. nov.
the confusion of the civil war in the reign of l. i. sub ann.
King Stephen, that prince created some *hono-* 1138. et
rary or titular earls, who had no counties, and Chron.
Norm. sub
ann. 1154.
whose

BOOK III whose dignity he maintained, in an extraordinary manner, by grants of crown-lands. This he did to oblige some of the barons of his party, whose ambition he could find no other means to gratify: but though, for some ages past, the custom of the kingdom has admitted such a prerogative to be unquestionably in the crown, it was then thought irregular; and therefore Henry the Second, in the first year of his reign, deprived those earls of their titles, and resumed the grants of crown-lands given to support their new honors.

It sometimes happened that alliances contracted by matches between the families of great earls did so extend and augment their power in the kingdom, as to render it dangerous to the state. But, on the other hand, the animosities and family quarrels, which often inflamed these petty princes against each other, divided and weakened their power; and were, perhaps, as advantageous to the liberty of the nation as hurtful to its peace. There never yet was any government so perfectly good, as not to have some inherent, constitutional evils; nor any so bad, but that the evils arising from it would in some measure correct and restrain one another. This appeared in the plan of policy settled here by the Normans. As the vigour and spirit infused into it did often, by the irregularity of its working, and the continual ferment which it raised, produce a feverish heat; so we find that some distempers, which would have been otherwise

otherwise fatal to it, were thrown off by this BOOK II.
 heat. And some excesses of the royal prerogative, which have since been wisely controuled, operated as remedies in that system against the immoderate authority of the nobles, while both these powers were checked by the arms entrusted to great numbers of the inferior freeholders, in consequence of the tenures by which they held their estates. But the regular force of a government more equally tempered, and orderly applications to parliament for the redress of any grievances, which might otherwise be too strong for the ordinary courts of justice, are much better securities, under our present constitution, to the liberty of the subject, the dignity of the nobles, and the majesty of the crown, than the frequent collision and struggle of those jarring powers, which, though they prevented the establishment of any *fixed tyranny*, disturbed the quiet, and discomposed the harmony, of the state.

Among the English earls some were invested by the crown with higher powers than the rest, possessing in their earldoms a regal jurisdiction, so that the king's writ of ordinary justice did not run there. The Saxons in England had such (as Mr. Selden has shewn), though they did not give the title of *Counts Palatine* to them; a title which seems to have been first used in the times of King Henry the Second. The earldom of Chester was granted by William the Conqueror to one Gherbod, a Flemish

See Titles of Honor, P. ii. c. 5. sect. 8.

V. Joh. Sarisb. de Nugis Cur. al. vi. c. 10.

BOOK II. *Flemish* baron, and afterwards to Hugh d'Avranches, otherwise called Hugh Lupus, to be held under the crown, by him and his heirs, with such a jurisdiction, that they had their courts both of criminal and civil justice, and their barons, as their great council, every one of whom had also a court under him, in the same manner as those barons who held of the King. John of Salisbury gives the title of *Palatine* to all the English earls upon the marches of Wales, because they likewise enjoyed a regal jurisdiction within the extent of those marches; and Hugh de Belesme, who was earl of Shrewsbury in the reign of William Rufus, is therefore called a *Palatine* in some records of the time of Edward the First.

Selden's
Titles of Ho-
nor, as above.

De Nugis
Curial. ut
suprà.

See Titles of
Honor, P. ii.
c. 5. sect. 8.
V. Baroniam,
l. ii. c. 1.
P. 154.

Mr. Madox observes, " that several of the lords marchers had a sort of regality, which made their seignieuries look like *palatinates*. They had the first cognizance of all causes and complaints within their lordships; they had their chancery, their justiciars, and other great officers, with an extensive jurisdiction belonging to the chief court of their honor."

Our kings were induced to make these grants, that the borders of their kingdom might be defended by the arms, and at the charge, of these noblemen, residing there, against the continual inroads of the Welsh; and that the conquests made in Wales might be maintained in the same manner. We find,
too,

too that the same motive produced similar grants upon the borders of Scotland. The entire profits of the county were given to every earl Palatine, for the better support of his dignity, or rather as a fruit of the regality he enjoyed; whereas other earls had only a third part. In truth, these lords were entrusted with a much greater authority, than any subject, in a well-constituted monarchical state, should ever possess: but yet neither they, nor any other English peers, could pretend to a legal right, as the great vassals of the crown did in France, to confederate with *foreign powers*, unauthorised or unlicensed by their own sovereign: a right so incompatible with order and government, that one is surpris'd it could ever be admitted in that or any other kingdom. Confederacies indeed for their mutual defence *among the vassals of the crown* appear to have been accounted not illegal in England: and in Stephen's reign there are examples of some English earls making treaties of that nature the one with the other, during the rage of civil war: but even those treaties had a reserve of their fidelity to their sovereign particularly expressed.

It is a remarkable thing, that all the charters now extant for the creation of earls (the most ancient of which were granted by Matilda) make no mention of any determined number of knights which the earls were bound to provide. The reason of this I imagine to have been, that the knights-fees which they possessed

BOOK II. possessed belonged to the barony annexed to the earldom, not to the office or dignity of an earl: and as other baronies differed in number of knights-fees by which they were held, so likewise did these. The most that I find in any barony of an earl were in the honor of Gloucester, which, during the reign of king John, had three hundred and twenty-seven knights, besides a tenth and a twentieth part of a knight, that is, lands charged with knight-service in those proportions. From many instances it appears, that it was not the rank or dignity of the tenant, but only the extent and goodness of the lands composing a barony, by which the number of knights-fees belonging to it was determined, and that the proportions in which these lands were granted, whether to earls or to barons, were often very unequal.

See Madox's
Baron. p. 93.

Baron. p. 157.
l. ii. c. i.

The great hereditary offices under the crown are called by Mr. Madox *officiary honors*; and he says, that when a lord had a *land honor* and *one of these*, he had *two distinct honors* vested in him. The same author observes, that the greater vassals or tenants of earls, barons, and prelates, were sometimes called barons; for which in another place he gives this reason: "The earls and great lords did then, in many particulars, imitate the form and fashion of the king's court. As the king had, so had they, their *dapifers* or seneschals, chamberlains, and other officers in their households, and likewise abroad their *barons*, or *chivalerian tenants*." But these (he says) were

Hist. of the
Excheq. c. 5.
p. 133.

Baron. l. i.
c. 6. p. 133,
134.

were styled *improperly* barons, and *only by way* BOOK II.
of resemblance. It seems to me that all who held
of the great lords by knight-service were not
usually called *their barons*, but only those who
were so considerable, as to have under them
other knights, or military subvassals. We find V. Spelman's
in some charters, that the magistrates or chief Gloss. BARO.
citizens of London, York, Warwick, and other
principal cities, had the title of barons. It
was even extended to all the judges in a county-
court. But in these instances the word is used Ibidem, BA-
very loosely. RONES Co-
MITATUS.

The name of *viscount* in those days was not
a title of honor, but signified only a sheriff.
The principal functions of this office are thus
defined by Mr. Madox, in his very accurate
history of the Exchequer: "It was the she- C. xxiii. p.
riff's duty to do the justice of his county, 643.
"to keep the publick peace, to stock and im-
"prove the king's lands, and to collect the
"king's revenue." It appears that in time
of war he also performed some military func-
tions; and the above-cited author has observed,
"that he usually was the *præfekt* or governor Baron. l. ii.
"of the king's castle in the county." It c. i. p. 145.
is said that among the Anglo-Saxons this V. Spelman's
officer was elected in the county-court by the Gloss. VICE-
people; and, in the reign of king Henry the COMES.
First, the citizens of London paid a fine to V. Mag. Reg.
that prince of a hundred marks of silver, that 5 Steph.
they might have the privilege of chusing their Madox's Hist.
sheriffs themselves. But no instance occurs of the Exch.
of such a liberty in the counties after the en- c. 11. p. 273.
See also Dis-
sertatio de
Magna Rot.

trance

BOOK II. trance of the Normans, till the statute made by Edward the First in the 28th year of his reign, by which he granted to his people, that they shall have election of their sheriff in every shire where the shrievalty is not of fee, if they list. Nor did that act of parliament continue long unrepealed. In the times of which I write, the sheriffs had the counties committed to them respectively by the king, at his pleasure, either in custody, or at farm-certain. The Empress Matilda made a convention with Geoffry earl of Essex, by which, among other things, she granted to him the shrievalty of London and Middlesex, at three hundred pounds yearly farm, and that of Hertfordshire at forty pounds, as his grandfather yearly held them. Three hundred pounds were then equivalent to at least four thousand five hundred now, and forty to six hundred. It appears by the rolls, that, under Henry the First, Richard Bassett and Aubrey de Vere were joint-sheriffs of *eleven counties*. This was extraordinary: but there are several instances under different kings of two or three being committed to the same person. Urso d'Abitot, in the reign of William the Conqueror, was made sheriff of Worcestershire, and the office was granted in fee to him and his heirs. Nevertheless it appears that his son was turned out of it by Henry the First, for having ordered one of the servants of that king to be slain. But it went to his sister, and, in her right, to her husband, Walter de Beauchamp, from whom it descended,

See Madox's
Hist of the
Excheq. c. 23.
p. 634.
Manusc. W.
Dugdale, in
Musæo Ashm.
Oxon.
Madox, ut
suprà.

See Dugdale's
Baron.
BEAUCHAMP
of ELMLEY.

ed, by inheritance, to William, their son, BOOK II.
 who in the reign of Henry the Second was
 also sheriff of three other counties, viz. those
 of Hereford, Gloucester, and Warwick. Arch-
 bishops and bishops were sometimes appointed
 sheriffs. In the reign of King Richard the First, V. Hoveden,
par. ii. f. 736.
Madox's Hist.
of the Ex-
cheq. p. 635.
 William, bishop of Ely, who was chancellor at
 that time, offered to give the king, for the shrie-
 valty of the several counties of York, Lincoln,
 and Northampton, fifteen hundred marks in
 hand, and a hundred marks *increment* (that is,
 above the usual farm) every year for each coun-
 ty. But the archbishop of York outbid him for
 Yorkshire, and was made sheriff thereof, on
 the payment of three thousand marks for that
 county alone, and the yearly increment of
 three hundred. Three thousand marks were
 then equivalent to thirty thousand pounds in
 these days. This auction of a ministerial and
 judicial office, of the highest trust and impor-
 tance, was a scandalous thing, and what does
 not appear to have been ever practised by
 Henry the Second.

It seems a strange policy in William the
 Conqueror, and some of his successors, to have
 granted, as they did, the office of sheriff to
 certain earls *in their own counties*. For by this
 means they lost that necessary check on the
 provincial authority of those mighty peers,
 which the crown usually had in the power of
 the sheriff, and much increased their influence
 over the people. In the great roll of the 15th
 of Henry the Second mention is made of the

BOOK II.

See Madox's
Baron. i. ii.
p. 144, 145.

viscountess of Beaumont, and in other years of that reign one or two others are mentioned, who, I presume, had inherited the office of sheriff, and bore the name jointly with their husbands, who executed the duties thereof. For so early as in the eleventh century it appears from ancient records, that there was in France an hereditary viscountess of Maine, whose husband was viscount or sheriff of that country in right of his wife. Certainly, the permitting an office of this kind to descend by inheritance, and even to females, may be reckoned among the faults of our old constitution.

Madox's Hi-
story of the
Exchequer,
c. 23. p. 644.

When it happened to fall to an infant, or unmarried woman, it must have been executed by a deputy: and I find an instance, in the reign of King Henry the Third, of a deputation given to Hugh de Babington, by Walter archbishop of York, to keep under him the two counties of Nottingham and Derby, which that monarch had committed to him as sheriff. But this could not be done without the leave of the king, and a writ to the barons of the Exchequer, signifying his acceptance of such deputation.

Many offices of the palace were rendered hereditary by William the Conqueror and our first Norman kings; which must have added very much to the power of the nobles, particularly the great offices of constable, marshal, chamberlain, and seneschal. What authority and jurisdiction belonged to the constable we may partly learn from a statute of the

13th of Richard the Second, wherein it is said, BOOK II.
 “that he ought to have cognizance of contracts touching feats of arms and of war out of the realm, and also of such things relating to arms or war within the realm, as could not be determined or discusst by the common law, with other usages and customs appertaining to the same matters, which other constables before that time had duly and reasonably used.” Madox says, “he was a high officer both in war and peace;” and observes that the word signified a captain or commander. Yet I do not find that, in the reign of Henry the Second, those who were constables to that king, namely, Henry de Essex and Humphrey de Bohun, ever had the chief command in his armies. On the contrary, some other noblemen are mentioned as generals and commanders in chief where the king himself was not present. Henry de Essex was *hereditary standard-bearer of England*: but whether that honor belonged to him as constable, or was a distinct office held by him together with the other, does not clearly appear. That he was constable under Henry the Second is evident by two charters given in that reign. This dignity was forfeited by him, as well as his barony, in consequence of his duel with Robert de Montfort, and was afterwards possessed by Humphry de Bohun, in the same reign, by virtue of his marriage with Margaret, eldest daughter to Milo earl of Hereford, who, by the death of her brothers,

Hist. of the
Exchequer,
c. 11. p. 27.

See Dugdale's
Baron. Essex,
and Madox's
History of the
Exchequer,
p. 28.

Madox, ut
supra.

BOOK II. became heiress to all her father's honors, of which this was one. How it had come from that family to Henry de Essex we are not told. But from the time of the above-mentioned marriage it continued in the Bohuns for ten generations. It appears by a record, that, in the reign of Edward the Third, Humphrey de Bohun, the last of that name, held several manors of the king *by the service of being constable of England*. And in the reign of Henry the Eighth, it was decreed by all the judges, "that his office might be annexed to lands; and descend even to females, who, while they remained unmarried, might appoint a deputy to do the service for them; but after marriage it was to be done by the husband of the eldest alone." They also declared, "that the service was not extinct, though part of the lands, for which it was done, fell into the hands of the king, to whom it was due; but remained entire in the eldest daughter: yet that the king might refuse the service, not to be forced to use the ministry of an unworthy person." Which expedient the king took, rather than admit the claim of the duke of Buckingham, who derived his title to it from the eldest daughter of the last Humphrey de Bohun. And after the death of that duke the office was never revived. The author of the dialogue *de Scaccario*, written under King Henry the Second, in describing the business done by the constable at the Exchequer, where he had a seat by virtue of his office, says, that

Dugd. Baron.
HERTFORD.
Camden, and
Madox's
History of the
Exchequer,
p. 28.
V. Spelman's
Gloss. CON-
TESTABU-
LARIUS.

Ann. 6 H.
VIII.

L. i. p. 10.

that when the *mercenary soldiers* of the king BOOK II. came to receive their pay there, it was his duty to examine their demands and accounts, with the help of his clerk, and see that the sums due to them were paid at the proper terms. From hence it appears, that besides the feudal militia some *mercenary soldiers* were kept in pay by King Henry the Second. These I suppose to be men whom he hired to serve him instead of the military tenants, who paid escuage to him by way of commutation for personal service.

Mr. Madox, describing the office of the king's mareschal, or mareschal of England, Hist. of the Exchequer, c. 2. p. 33. says it was executed partly in the king's army in time of war, and partly in his court in time of peace. Of the military functions of this officer he tells us nothing more, than that he and the constable were to give certificates to the barons, of their having duly performed the service required of them in the king's armies; which seems to shew that these officers had a legal superintendency over those armies. But, from other accounts, it appears, that in Edward the First's reign the mareschal's post was in the van-guard, and that it was his duty and the constable's to *muster the forces*. His civil duties were (as Madox has collected them from ancient records) to provide for the security of the king's person in his palace, to distribute the lodgings there, to preserve peace and order in the king's household, and to assist in determining controversies arising among them. He also

Ibidem, p. 31.

See Rymer, vol. ii. p. 783.

BOOK II.

P. 10.
Hist. of the
Exchequer,
c. 2. p. 31.
Dugd. Baron.
MARESCHAL
earl of Pem-
broke,
p. 600, 601.
Spelm. Gloss.
MARES-
CHALLUS.

performed certain acts, by himself or his substitutes, at the king's coronation, at the marriages and interments of the royal family, at the creating of barons and knights, and at other great and ceremonious assemblies in the king's court. It is said, in the dialogue *de Scaccario* abovementioned, that no business of importance ought to be done without his being consulted. Under Henry the Second this office was held by a family, who seem to have taken their name from thence, and were only of the rank of barons: but under Richard the First, William Mareschal, having obtained the earldom of Pembroke, was styled *Earl Mareschal*; and as, from that time, the office remained in the possession of earls, though of different houses, that title also continued; and the power of it seems to have increased from the dignity of the noblemen who held it. In its first sense it signified master of the horse to the king.

V. Dugd.
Baronag.
VERE.

The office of *high chamberlain*, or *the king's chamberlain* (as this officer was usually called in that age), was of eminent dignity and great power in the court. It was given by Henry the First, on the forfeiture of Robert Malet, to Alberic de Veré and his heirs: which grant was afterwards confirmed to the son of Alberic by Matilda: but I doubt whether this lord continued to enjoy it under Henry the Second; for other persons are named as chamberlains in the rolls of that reign.

The

The office of *seneschal* under the same king BOOK II.
 was possessed by Hugh Grentesmeinel baron of Dugd. Baron.
 Hinkley, who leaving no issue male, it GRENTES-
 descended to Petronilla, his eldest daughter, and MEINIL, and
 in her right to her husband, Robert de Bello- LEICESTER.
 mont, earl of Leicester, surnamed *Blanchemains*, and son to the Grand-justiciary, of whom mention has been frequently made in this book. It was at all times a great office; but the jurisdiction of it increased much, when the Grand-justiciary's was diminished; which did not happen till after the decease of King Henry the Second. Indeed these offices could not possibly have subsisted together in the height of their power; the functions and dignity appertaining to each of them having been nearly the same. But, in the times I write of, that of *seneschal* was much inferior to the other; and the authority of it seems to have been not very different from that of the Lord steward of the household at present.

The Grand-justiciary (as Sir H. Spelman observes) singly executed, in those days, the several functions and powers of the four principal judges in modern times, viz. the Chief-justice of the King's-Bench, the Chief-justice of the Common-Pleas, the Chief-baron of the Exchequer, and the Master of the Wards. He was too great for a subject: but, happily for the crown, during the times that I write of, the office was not hereditary, nor even for life; and it was usually tempered by a joint

BOOK II. administration of it in several persons. Thus

See Dugdale's Origines Juridiciales. we find, that, in the reign of King Henry the First, Roger Bishop of Salisbury and Hugh Basset were jointly possessed thereof; and, under Henry the Second, Richard de Lucy was joined in commission with Robert earl of Leicester. Yet it seems that the former, after the death of the latter in the year eleven hundred and sixty-eight, was sole Chief-justice of England during several years; for neither in the rolls, nor in history, is any mention made of another, till the year eleven hundred and seventy-nine; when, upon his resignation, the bishops of Winchester, Ely, and Norwich, were constituted Chief-justices, that is, (says Sir W. Dugdale) had the administration of that high place; but they did not hold it long: for the next year it was given to Ranulph de Glanville, who enjoyed it alone till after the decease of Henry the Second.

V. Ord. Vital. p. 905. ad ann. 1136. & p. 919. ad ann. 1139. Madox's Hist. of the Exchequer, c. 2. p. 23.

V. Diceto, sub ann. 1179. Dugdale's Origines Juridiciales.

V. Hoveden, sub ann. 1180. f. 342. Hist. of the Excheq. c. 2. p. 24. Spelm. Gloss. p. 338.

V. Madox's Hist. of the Exchequer, p. 26.

more scarce in that reign, than they had been BOOK II.
 in any, from William the Conqueror's, to
 the end of Henry the Second's. But it is pro-
 bable that this assignment was not the whole
 profit belonging to the office.

Mr. Madox observes, in his history of the C. ii. p. 54.
 Exchequer, "that, for some time after the
 " Conquest, the Chief-justiciary used to do
 " many acts, which, afterwards, appertained
 " to the treasurer's office." Yet there was a
 treasurer then among the great officers in the
 king's court, of whose functions the same au-
 thor gives this account. "It seems to have Ibidem,
 " been the part or duty of the treasurer in an- P. 54, 55.
 " cient time to act with the other barons of the
 " Exchequer in the government of the king's
 " revenue, to examine and controul accomp-
 " tants, to direct the entries made in the great
 " roll, to attest the writs issued for levying
 " the king's revenue, to supervise the issuing
 " and receiving of the king's treasure at the
 " receipt of the Exchequer, and in a word
 " to provide for and take care of the king's
 " profit."

It appears that, from the eleventh to the
 thirty-first year of king Henry the Second,
 this office was held by Richard, the son of
 Nigel bishop of Ely; and a contemporary v. Hist.
 writer informs us, that his father purchased it Elienf. in
 for him of the king at the price of four hun- Angliâ Sacra,
 dred pounds. He was a clergyman, and after- par. i. p. 627.
 wards bishop of London. The venality of
 great offices, and even of some which were
judicial,

BOOK II. *judicial*, may be reckoned among the faults of policy in those times.

See Madox's
Hist. of the
Excheq.
p. 43. and
Dissert. on
the great roll.

We find by the Exchequer rolls, that in Henry the First's reign, Geoffry, his chancellor, stood debtor to him, for the custody of his great seal, somewhat above three thousand pounds: a price as high in those days, as forty-five thousand pounds would be in these, at the lowest computation. And the bishop of London, in the letter to Becket, of which mention has been made in the account before given of that prelate's promotion to the see of Canterbury, says, it was a matter of publick notoriety, that he had bought the office of chancellor for many thousand marks. But this does not appear from the rolls.

Of the functions and power of this officer some account has been given in the former part of this book. It may be proper to add here, that, in the dialogue *de Scaccario* before-cited, it is said, *he was great in the Exchequer, as well as in the court, so that nothing of moment was, or could be, done there, without his consent or advice.* And the same treatise informs us, that in the court of Exchequer the Grand-justiciary presided under the king; next to him sat the chancellor; then the constable, then the chamberlains, and lastly the marshal. Mr. Madox observes, that, as the power of the justiciary declined, that of the chancellor grew; and he conjectures that the latter office received a considerable accession of power and dignity from the greatness of some of the persons

L. i. p. 9.

L. i. p. 8.

Hist. of the
Exchequer,
p. 43.

sons who had borne it. He likewise says, *that* BOOK II. P. 21, C. 2.
the splendour of the king's court appeared very much in the greatness of his officers and ministers.
 But some of them were *so great, and splendid,*
 as, instead of augmenting, to diminish the
splendour of their masters, and draw the eyes
 of his other subjects from him to themselves.

Many of the nobles and gentry held lands
 of the crown by the service of *grand-serjeanty*,
 which is called by Sir H. Spelman *the highest*
and most illustrious feudal service. Sir Thomas V. Gloss. SER-
JEANTIA. Lyttelton says, "that tenure by grand-
 " *serjeanty* is when a man holds his lands or
 " *tenements of the king by such service as*
 " *he ought to do in his proper person to the king,* See Lyttel-
 " *as to carry the banner of the king, or his* ton's Tenures;
 " *lance, or to lead his army, or to be his* & Craig, de
 " *mareschal, or to carry his sword before him* Jure Feudali,
 " *at his coronation, or to be his sewer at his* l. i. tit. 11.
 " *coronation, or his carver, or his butler, or* sect. 5.
 " *to be one of his chamberlains of the receipt*
 " *of his Exchequer, or to do other like ser-*
 " *vices," &c.* Which definition the learned
 Craig has espoused in his admirable treatise on
 feudal law. Yet Mr. Madox has shewn, by V. Mad. Ba-
 the evidence of records, that some who held by ronia, l. iii.
grand-serjeanty were not bound to do their service C. 5.
in their own persons. But the instances of this
 kind are, I believe, so few, as not much to
 impeach what Sir Thomas Lyttelton has
 asserted. The latter says, *that all, who hold of*
the king by grand-serjeanty, hold by knight-
service: but this is well explained by his
 commentator, Lord Coke, to mean only, that
 this

BOOK II.

this tenure had *the effects of knight-service*, wardship, marriage, and relief. Lyttelton himself, in the passage cited above, mentions some serjeanties which were not of a military nature: he likewise observes, that the relief paid for this kind of tenure was not the same as for lands that were held by knight-service; being one year's value of the lands and tenements over and above all charges or reprises; whereas the relief of a knight's-fee was but a hundred shillings. Nor did such tenants pay scutage, like other military vassals, even when the service, to which they were bound, was of a military nature; the reason of which seems to be, that, although the king might be willing to commute with an ordinary knight for his service, he would not so easily admit a commutation, where the service was to be done to him in his own person, or in what concerned his royal dignity in a more particular manner: nor would a tenant, who was honoured by such a distinction, desire that his office should be performed by another.

Baronia, l. iii.
c. 5. Among several instances of this tenure not relative to war or knight-service, Mr. Madox mentions one of a singular kind. In the reign of Henry the Sixth, John Baker held certain land in Kent of the king, *by the service of holding the king's head in the ship which carried him in his passage between Dover and Whit-sand*. This was adjudged to be *grand-serjeanty*: and it evidently appears, that the idea of *royalty* in our ancient constitution must

must have been very high, when *such a service* done to the person of the king was deemed by the law *the most honourable tenure*. But it must be always remembered, that the idea of a king in that constitution was *a supreme head and ruler of a free nation, to whom allegiance was due in return for protection*; and to that idea too much reverence could not be annexed.

There was, also tenure by *petit serjeanty*, of which Sir Thomas Lyttelton gives this account, “that it was where a man held his land of the king, to yield to him yearly a bow, or a sword, or a dagger, or a cutlass, or a pair of gloves of mail, or a pair of gilt spurs, or an arrow, or diverse arms, or other such small things belonging to war:” which description Sir H. Spelman likewise adopts, and agrees with Lyttelton, that this service was but *focage* in effect; for which the latter gives this reason, “because such tenant by his tenure is not bound to go to war, nor do any thing *in his proper person* relating to it, but to render and pay yearly certain things to the king, as a man is bound to pay a rent.” He says too, that none can hold by *grand* or *petit serjeanty*, but of the king: Yet Bracton mentions serjeanties held of private persons; as, for instance, if a man is bound to ride with his lord from manor to manor: but then he distinguishes these from those serjeanties that regarded the king or the defence of the realm, with respect to the claim of wardship and marriage.

BOOK II.

V. Gloss.
SERJEANTIA
MINOR.V. Bracton,
l. ii. c. 35.
Spelm. Gloss.
SERJEANTIA
MAJOR.

It

BOOK II.

It also appears, that the great nobles affected so much to form their households on the model of the king's, that they had *hereditary officers*, to whom they also granted fiefs. Mr. Madox recites a grant from William, earl of Warwick, to Alan his cook, by which he confirmed to him the office his father Richard had held, namely, *the chief ministry of his kitchen (capitale ministerium coquinæ meæ)*, which was vulgarly called the place of master cook (*quod dicitur magister coquus*), to be held by him and his heirs, of the said earl and his heirs, as fully and entirely as his father had enjoyed it, with all fees of the said kitchen (*cum omnibus feudis dictæ coquinæ*), and all appurtenances belonging to the master cook. By the same charter we find, that the said Allan and his father had an estate in land granted to them by the bounty of their lord, with a power to hold courts over their tenants or vassals, without contradiction from the said earl and his heirs: so high a regard did some of our ancient nobility pay to their cooks; and so munificently did they reward them *for the good services done in their kitchens!*

See Hist. of
the Excheq.
c. 2. p. 39.

Besides earldoms, baronies, and officary honors, there was in those days an honorary dignity, which was thought to add a new lustre to the highest degrees of nobility, nay, even to princes and kings themselves; I mean, *the order of knighthood*. It was accompanied with a solemn religious engagement, the nature of which, as well as the purposes of this singular insti-

institution, I cannot better set forth, than in the words of Alphonso the Fifth, king of Portugal, as they are delivered by a good and authentick historian. That prince, after having taken the city of Arzila, by assault, from the Moors, went immediately, in great solemnity, to the chief mosque, and when he had prayed some time before a crucifix, which was placed upon the dead corpse of the count de Marialva, who had been killed in the action, he commanded his son, the Infant of Portugal, to kneel down by his side; which being done, he drew his sword, and said to the young prince, “ My son, we have received this day a great favour from Almighty God, who has made us masters of so important a place, and given me so fair an opportunity of conferring on you the order of knighthood, and arming you with my own hand. But, first to instruct you what the nature of that order is, know, my son, that it consists in a close confederacy or union of power and virtue, to establish peace among men, whenever ambition, avarice, or tyranny, trouble states, or injure particulars. For knights are bound to employ their swords on these occasions, in order to dethrone tyrants, and put good men in their place. But they are likewise obliged to keep fidelity to their sovereign, as well as to obey their chiefs in war, and to give them salutary counsels. . It is also the duty
“ of

V. Marmot.
Africa, t. ii.
l. iv. c. 53.

BOOK II. “ of a knight to be frank and liberal, and to
“ think nothing his own, but his horse and
“ arms, which he ought to keep for the sake
“ of acquiring honour with them, by using
“ them in the defence of his religion and coun-
“ try, and of those who are unable to defend
“ themselves. For, as the priesthood was
“ instituted for divine service, so was chivalry
“ for the maintenance of religion and justice.
“ A knight ought to be the husband of widows,
“ the father of orphans, the protector of the
“ poor, and the prop of those who have no
“ other support: and they who do not act thus
“ are unworthy to bear that name. These, my
“ son, are the obligations which the order of
“ knighthood will lay upon you: consider
“ whether you are desirous of it upon these
“ terms.” The prince answering, that he was;
the king went on to ask him, if he would
promise to perform all these several duties, and
make them to be observed, with other rights
and customs of the order of knighthood? To
which he having consented, “ On these con-
“ ditions,” said the king, “ I make and arm
“ you a knight, in the name of God, the Fa-
“ ther, the Son, and the Holy Ghost;” and
at each of these sacred names, striking him
with his sword on the helmet, he added,
“ May God make you as good a knight, as
“ this whose body you see before you, pierced
“ in several places for the service of God and
“ of his sovereign!” Then kissing him on the
the

the forehead he raised him up with his BOOK II.
hand.

Such was the idea of chivalry in its principles, and according to the original purity of it: nor can one easily imagine a nobler incitement to brave and virtuous actions: but it was an idea too perfect for human nature; and the general practice of those who took this engagement was far from being conformable to its intentions and rules. One may also object to it, that, not being confined to kings or princes, but extended to great numbers of private men, it seemed to take the sword out of the hand of the magistrate, to whom only belongs the maintenance of religion and justice in a well-governed state. But still the institution had something exalted and heroic in it; and I will venture to say, that, from the ninth to the sixteenth century, the brightest virtues which dignified, either the history of this nation, or that of any other people in the whole Christian world, were chiefly derived from this source. Had it not been for the spirit of chivalry, the corruption of religion, the want of all good learning, the superstition, the ferocity, the barbarism of the times, would have extinguished all virtue and sense of humanity, as well as all generous sentiments of honour, in the hearts of the nobility and gentry of Europe: nor could they have been able to resist the military enthusiasm of the Saracens and the Turks, without the aid of another kind

BOOK II. of fanaticism, which was excited and nourished in them by means of that spirit.

Some very eminent writers have thought that the origin of this institution was a voluntary association of private men, to defend the publick and particulars, but more especially women, from the many grievous disorders that infested all Europe upon the decline of the family of Charlemagne. But Mr. Selden takes notice, that some traces of it occur in that emperor's reign; and both he, and our great antiquary, Spelman, incline to derive it from a custom of much earlier date, namely, that observed by Tacitus among the ancient Germans, of giving arms to their young men in the publick assemblies, and the adoption *per arma* practised by the Goths and some other barbarous nations. But whether it first came from Germany, or from the Lombards in Italy, among whom the most evident marks of it are found, the commencement of it was certainly prior to the epocha above-mentioned. Nevertheless it is probable, that the confusion and violence of those times made the practice of it more general, as being more necessary; and might also occasion the consecrating of it with solemn vows and religious rites. The first mention made of those ceremonies in England is by Ingulphus, who wrote under the reign of William the Conqueror. He says, it was the custom of the Saxons in England, that the person who was to be knighted should prepare for

Titles of
Hon. part ii.
c. 5. sect. 34.
Ibidem, c. i.
sect. 58.
Spelm. Gloss.
MILES.
See also Pere
Daniel Hist.
de France,
Charlemagne.
& Hist. de la
milice Franç.
t. i. l. iii.
c. 4.
V. Paulum
Diaconum.
Spelman, ut
suprà.
Selden, ut
suprà.

for it by confession and absolution of his sins BOOK II.
the evening before, and afterwards by watch-
ing all night in the church; that in the morn-
ing he should offer his sword on the altar, and
receive it blest from the priest, who, with a
benediction to him, should put it about his
neck, after his having heard mass and taken
the sacrament. But, in the account which is
given by W. of Malmfbury, of Athelstan's V. Malmfb.
de gestis Reg.
Ang. l. ii.
being knighted by king Alfred his grandfather, c. 6.
nothing is said of these rites, though the histo-
rian particularly mentions the giving him a
sword and a rich belt, with a crimson or scar-
let robe, as the ensigns of knighthood. And
Ingulphus adds, that the Normans, abomina-
ting this manner of consecrating knights,
despised those who were so made, and altered
the custom. Nevertheless it is certain, that
some of these sacred forms were used in Eng-
land, as well as in France, for several ages; See Selden's
Titles of
Hon. part ii.
c. 5. sect. 35.
Johan. Sarisb.
de Nugis Cu-
rerialium, l. vi.
20.
Petr. Blesens.
epist. 94.
See P. Daniel
Hist. de la
milice Fran-
çoise, l. 3.
c. 4. p. 99.
Upton de Mi-
litaris Officio,
l. i. c. 3.
particularly the receiving of the sword from
the altar. Other ceremonies also were prac-
tised, that are not named by Ingulphus, and
of which the most essential appear to have been,
the bathing the candidate, and, after his being
so purified, the girding him with his sword,
the putting on his feet a pair of gilt spurs, and
striking him gently with a sword on the neck,
head, or shoulders. When these things
were done in the royal palace, and some of
them by the hands of the king (as they fre-
quently were), the solemnity was graced by the
songs and musick of minstrels, who attended

BOOK II. on the knight, and by many other marks of rejoicing and honour. Robes of different colours were also given to him at the expence of the crown. In the history of the Exchequer I find an account of thirty-three pounds, for three robes of scarlet, two robes of green, and other necessaries for making a knight, allowed by king John. But in some accounts of the reign of Henry the Second the expence of this ceremony is not near so great; which may have been owing to his better œconomy. A difference was made in the dress of knights and esquires, it not being permitted to the latter to wear any gold, though they were of the highest quality; and from hence, I suppose, as well as from the gilt spurs given to knights at receiving the order, they were distinguished by the name of *Equites Aurati*.

See Madox's
Hist. of the
Exchequer,
c. 10. p. 255.
Rot. 16. a.
Kent.
Ibidem, Mag.
Rot. 2 H. II.
Rot. 12. 6.
Mag. Rot.
22 H. II.
Rot. 1. 6.

See Upton de
Re Militari,
l. i. c. 3.
Selden's Tit.
of Hon. c. 5.
sect. 34.

In time of war and actual service the above-mentioned forms were much abridged. The person who was to be knighted presented a sword to the king, or commander in chief, if the king was not with the army, and desired to receive the order of knighthood, which was given him with no other ceremony than a stroke on the neck with that sword. Before an assault, or a battle, or any perilous action, it was customary to make a number of knights in this manner, as an encouragement to those who were thus chosen out from all the esquires there present, to act not unworthily of the dignity they received. The same thing was done at the conclusion of a battle or siege,

or

or other military exploit, as a reward to those who had distinguished themselves by their valour. And this was justly esteemed the most honourable knighthood. In France the order was given with the following words: "I make thee a knight, in the name of God and my Lord St. George, to maintain the faith and justice loyally, and defend the church, women, widows, and orphans." In the empire the oath, anciently taken by the knights, at receiving the order, was to the same effect. But John of Salisbury, in his book *De Nugis Curialium*, which appears to have been written under the reign of king Stephen, says, that in England, for the most part, it was then become the fashion not to administer any oath to the knights. Yet he labours to shew, that by the indispensable duty of their office, they were tacitly bound to the defence of the church; and avails himself (as does likewise Peter de Blois, who wrote not long afterwards) of the ceremony of their taking their swords from the altar, as indicating a profession of their having received it to the defence and honour of the priesthood, the assistance of the poor, the punishment of evil deeds, and the freeing of their country from tyranny or oppressions. Indeed both these writers add, that many of the knights did in no wise act agreeably to such a profession; but as if they had vowed the very contrary; especially with regard to the church. Yet the general opinion of their being engaged to serve

BOOK II.

V. Division
du Monde.
Selden's Tit.
of Honor,
pars ii. c. 3.
sect. 24.

See Selden,
ib. c. 1. sect.
60. c. 5. sect.
35. L. vi. 10.

V. Epist. 9.
Petr. Blesens.

BOOK II.

and defend it must have contributed greatly, in the age that I write of, to promote the crusades; as the entering into that warfare appeared only a consequence of the original obligations which every knight had contracted in receiving his knighthood. And in the next age it induced them to draw their swords with equal zeal against the Vaudois and Albigenes, whom the clergy represented to them as enemies to the church and catholick faith.

Every knight had a power, inherent in himself, to make other knights, not only in his own country, but wherever he went: and (what seems more extraordinary) knighthood was sometimes conferred in England by those who themselves had it not, and were indeed incapable of it, viz. bishops and abbots. William Rufus was knighted, in his father's lifetime, by Lanfranc archbishop of Canterbury. The foundation of this must, unquestionably, have been a notion, that the order, being conferred with sacred rites and forms of prayer, was a kind of religious institution. During the reign of king Stephen, we find that the earl of Gloucester knighted his brother, who was afterwards earl of Cornwall; and other examples occur of the same power being exercised, for several ages, by private persons in England, without the authority of a royal commission. Nay, our kings themselves have been knighted by the hands of their subjects: as Henry the Sixth by the duke of Bedford's, and Edward the Sixth by the duke of Somerset's. Knighthood was therefore distinguished from all other honours

honours and dignities in a state by this remarkable difference, that those were supposed to be derived from the king, as their fountain and head; but this might be given to the king himself by his subject. It might also be given by any sovereign prince in the territory of another, and the rank assigned to it was the same in all Christian countries. BOOK II.

The poet Gunther, who was contemporary with Henry the Second, says, in a Latin poem, that the Emperor Frederick Barbarossa, the better to repel the enemy from his borders, and defend his country by the superior force of his arms, granted knighthood to many persons of low and vulgar birth, which in France would have been thought a stain to that dignity. And from a passage in Glanville (of which I shall say more hereafter) it may be inferred that in England, under Henry the Second, even enfranchised villeins, born in servitude, were sometimes knighted. Yet this, I presume, was only done, when they had performed very extraordinary actions in war, after having obtained their freedom.

In the reign of Henry the Third the honor and lands of Roger de Somery, baron of Dudley, was seized by the crown, *because he did not come to the king to be girt with the belt of knighthood.* And in the nineteenth year of the same king, all the sheriffs of England were commanded to make proclamation in their respective counties, that all who held of the king in chief one knight's-fee, or more, and were not yet knighted, should take arms

See Madox's
Baronia, l. i.
c. 6. p. 130.

BOOK II.

and get themselves knighted, before the next Christmas, as they loved the tenements or fees which they held of the king. Whether, in the times that I write of, any compulsion was used to oblige men to be knighted, I cannot positively affirm: but as Mr. Madox, in his history of the Exchequer, has given no records of any fines having been levied on that account, or proclamations issued to enjoin it, till the reign of King Henry the Third, and many in and after that reign, the presumption is strong, that it had not been the practice before the death of King John.

Indeed it seems a deviation from the original principle of this institution. For one cannot but think it a very great inconsistency, that a dignity, which was deemed an accession of honour to kings themselves, should be forced upon any; and still more, that such numbers of a lower rank of gentry should be obliged to receive it, as a duty annexed to their fiefs.

V. La Salade,
fol. 54.

Guillaume le Breton, who wrote under Philip Augustus, says of a young nobleman, who had distinguished himself in the army of France at the battle of Bouvines, that he was worthy to be made a knight, both by his family and by his *actions*. There is also in a French treatise of no little authority upon this subject the following passage: "An esquire,
" *when he has travelled much, and been in*
" *many exploits of arms, out of which he has come*
" *with honour, and who has an estate sufficient to*
" *maintain the rank of knight-hood* (for otherwise
" it would be no honour to him, and it is bet-

“tar to be a good esquire than a poor knight),
 “ought to desire any lord, or valiant knight,
 “to knight him, in the name of God, &c.”

Here not only the being possessed of a competent fortune, but the having given many proofs of personal valour, is made a necessary qualification for the attainment of knighthood; and it is spoken of as an honour which the esquire was to gain, not as a burthen imposed upon him by law or tenure. A learned member of the French academy, who has lately enriched the republic of letters with some excellent observations on ancient chivalry, has shewn that, in France, the education given to those who aspired to knighthood was excellently calculated to make them good foldiers, and instruct them in all the duties of that noble profession. Undoubtedly the same methods were used in England: for our first kings of the Norman race introduced into their courts the fashions and manners of France with little alteration; and most of our nobility, during the times which I write of, being of Norman or French extraction, and keeping up a perpetual intercourse with their countrymen, the plan of education in France must naturally have been thought the best they could follow. Among the French, a young gentleman, destined to arms by his parents, was usually taken, when he was seven years old, out of the hands of the women, who till then had the care of his breeding, and remained a *page* till fourteen, in the family of some knight: after which he served seven years in the

V. Memoires
 sur l'ancienne
 Chevalerie,
 t. i. l. i. &
 Notes.

BOOK II. the quality of *esquire*, and was then knighted: but this term of pupillage and of service was frequently abridged, and knighthood was given to some persons at fifteen or sixteen years of age, if they had an extraordinary forwardness and maturity of strength, or were of very high rank, as princes, or the sons of princes. Sir H. Spelman says, that, with the English, fifteen is accounted the lawful age of knighthood: but he observes that two of our kings were knighted when they were much younger, namely, Edward the Sixth in his tenth year, and Henry the Sixth in his fifth.

See Spelman's Remains, De milite dissert. p. 175.

V. Memoires sur l'ancienne Chevalerie, t. i. p. 95, 96.

Every knight had his lady, to whom he vowed faithful service, whose favours he wore in tournaments and in battles, and for whose honour he was always prepared to combat, with no less zeal and enthusiasm, than for the defence of the catholic religion itself. This was inculcated to them in the first rudiments of their education: for an old chronicle tells us, that, *together with their catechism, the young gentry were taught the art of love.* The great purpose of these instructions was unquestionably to make the passion of love an incitement to valour, and likewise to humanise and subdue the ferocity of their manners. Both these ends were accomplished; the first in a high degree, and the latter as far as the general barbarism of the times, in other respects, would permit. By some passages in ancient writers who treat of chivalry, it appears, that, in the lessons of love which were given to the candidates for the order of knighthood, a kind of

Platonic

Platonic refinement and purity was inspired: **BOOK II.** but we learn from the history of those ages, that these sentiments were very seldom of much more use to secure the chastity of the ladies, than the enchanted armour, which some knights imagined they wore, was to guard their bodies from swords or lances.

The very amusements of chivalry were a perpetual discipline and school of prowess. Enough has been said before of tilts and tournaments, and other methods of exercising the courage of the knights, in times of peace. But when their own country did not furnish them with sufficient opportunities of displaying their valour, so impatient were they of ease, and so desirous of glory, that they often went into foreign lands, *to seek adventures*. If any enterprise of great peril was undertaken by a knight, he often associated with him *a brother of arms*: which fraternity was esteemed so close a bond, that their obligation to aid each other was only subordinate to the loyalty due to their sovereign; nor is it probable (if we consider the temper of the times) that, when such an engagement had been cemented by common dangers and benefits, it could be always kept subject even to that limitation.

We are assured by a learned antiquary, that V. Du Cange
Dissert. à la
suite de Join-
ville. the compact was sometimes ratified by the parties opening their veins, and mingling their blood, to signify that each of them was ready to shed his, in defence of the other. A near relation was also contracted between the person who received the order of knighthood, and
him

BOOK II. him who conferred it; the imparting of that honour being deemed a kind of *adoption*, not, indeed, with regard to the right of inheritance, but to a communication of paternal and filial affection.

All this seems quite *romantick*; and indeed the old romances are no contemptible histories of the manners of those times. The knight-errantry they describe had then a real existence. The gallantry of the knights to the ladies, which had an air of devotion; their presenting them with the prizes they had won in their tournaments, and even with the prisoners they had taken in war; their delivering captives, especially of the fair sex, from castles, where they were violently detained and injuriously treated; their pursuing assassins, or robbers, to punish and destroy them without form of law; and their obliging lords of castles to abolish *evil customs*, which they had caused to be observed in their districts or manors; all these things, which are feigned of knights, in the French and Spanish romances, were often done in real life, and arose out of the principles of knighthood itself, the disorders of the feudal governments, and the spirit of the times. Even the most incredible fictions in these books, the sorceries and enchantments, had a foundation in the established faith of those ages, and in the many superstitions which the Christian religion, as well as the Jewish, the Mahometan, and the Pagan, was then over-run with: so that what
in

in these days appears to us the delirium of a BOOK II.
 wild imagination, was in those the universal
 creed of mankind. The extraordinary honours
 paid to knights, in castles, in cities, and in the
 courts of great princes, are likewise truly re-
 presented by the description given of them
 in old romances: but besides these, which
 they enjoyed in every country, from the cour-
 tesy of the times, they had in England some
legal distinctions and privileges, granted to the
 whole order, and which shew the high esti-
 mation of it in the eye of the law.

Mr. Selden takes notice of it, as “ a spe-
 “ cial honour to knighthood, that though it be
 “ regularly supposed in law, that no heir of
 “ a tenant by knight-service is able to do the
 “ service of himself, until he be of the age of
 “ one-and-twenty years (which is the reason
 “ and ground of all our wardships of male-
 “ heirs), yet if any such be knighted, either in
 “ the tenant’s life-time, or after his death, of
 “ what age soever he be, he is adjudged, for
 “ that purpose only, as of full age, and the
 “ wardship of his body in the one case is pre-
 “ vented by it, and in the other ends with
 “ it. For, in regard that, by the laws of
 “ honour, he is adjudged to be a knight, there-
 “ fore, by the common law, he is likewise ad-
 “ judged so able to do the service, as that his
 “ body needs no further tuition of a guardian
 “ over it.” But the same author observes,
 that, by the grand charters both of King John
 and Henry the Third, though the wardship of
 the

Titles of
 Hon. part ii.
 c. 5. sect. 37.

BOOK II.

the body be ended by the tenant's receiving the order of knighthood, yet the land was to continue in the custody of the lord till the heir was of the age of twenty-one years. "From this reason (says he) it was, that, under Henry the Second, some are fined for procuring others than the king to knight any of the king's wards; whereby he lost his wardship of the body." Other privileges of knighthood in judicial proceedings are mentioned by Mr. Selden, as "that the grand assize in a writ of right (which is as a jury, and the highest trial by oath that is in the law) is to be chosen by knights, and out of knights, if they can be found." It appears by Glanville that this was law under Henry the Second. And in the Pipe-rolls of that reign one is fined at a hundred pounds for striking a knight; and another at forty marks, because he was present when the knight was compelled to swear that he would not complain of the injury done to him. These instances shew a great regard in the law to the honour of knighthood: for a hundred pounds was in those days a very high fine. I take no notice here of any distinctions given to knights in later times, which I am not sure were enjoyed by them during those that I write of. But it appears by the dialogue *de Scaccario*, that, under King Henry the Second, the horses and arms of a knight who had a good reputation were not to be sold, even for the payments of his debts to the king, under a process out of the Exchequer;

quer; but were to be privileged, that, when-
ever there should be occasion, he might be
called out, well furnished with these neces-
saries, to serve the king and kingdom. The
ransoms paid to knights for the prisoners they
took, and the share assigned to them, by cus-
tom, of all the booty and spoils which were
gained from an enemy, furnished them with
ample means of advancing their fortunes: but
they had moreover rich presents made to them
by the princes, or nobles, they served, upon
the performance of any eminent feats of valour.
And as every knight was permitted, by the
law, or usage of the times, to offer his sword
occasionally to different potentates, when they
were not in an actual state of hostility against
each other, it often happened that the same
person was enriched by the munificence of se-
veral courts. It was indeed the interest of a
king, or any great feudal lord, to let his knights
seek employment wherever reputation was to
be gained, if he himself had no immediate
want of their service, in order to keep up the
fame of his chivalry; and that they might
return to him more experienced and improved
in the art of war. By this means the militia,
in which the principal and peculiar strength of
the feudal governments lay, was kept in con-
stant exercise, and frequent actual service;
without which no militia can ever be equal to
a veteran standing army. And it is very
remarkable, that, although the nobility and
gentry of England were bound to fight for
their

BOOK II. their king and country by the lands which they held, yet the policy of our forefathers thought it necessary to add all these further rewards of honorary distinctions and other emoluments, that they might perform their duty with more alacrity, and make themselves equal to so high and important a trust as the safety and glory of the nation. It may be truly said, that the grants of the military fiefs gave a *body* to *chivalry*; and these institutions a *soul*. Nor is it probable that without some encouragements of this nature, which raised and kept up in the military tenants a strong martial spirit and ardour for the service, they would ever have been such good soldiers as we find they were, or would not, after some time, have degenerated, as other militias have done, into a force merely nominal, and of no more real use to the security of the kingdom, than the rusty armour and lances hung up in old Gothic halls, rather as images of ancient prowess, than instruments of present defence. But, from the methods here described (wherein I think we may discover a deeper meaning, and better sense, than is generally supposed), the feudal militia acquired a vigour and an energy, which no laws could give to it, and which can only be surpassed by the most exact discipline of regular armies, inured to war. Indeed it never quite sunk, till *the spirit of chivalry* began to grow out of fashion, and was ever rendered the object of ridicule; a misfortune into which every species of heroism is apt to fall, from

from the near affinity that there is in morals, **BOOK II.**
as well as in writings, between *the sublime* and
the extravagant; and from the proneness of
human nature to undervalue that which it
finds to have been overvalued.

When the order of knighthood was account-
ed the highest honour, to be degraded from it
was thought the most ignominious punish-
ment that a gentleman could endure: This
was done by the ceremony of taking from the
delinquent the proper ensigns of knighthood,
which had been given to him at his creation,
namely, the sword and gilt spurs. But I do
not find any instance of such a degradation in
the times that I write of, except, perhaps, in
the case of Henry de Essex, who, it may be
presumed, from the words of a contemporary
historian, was deprived of his knighthood, with
the marks of infamy abovementioned, before
he took the habit of a monk, in consequence
of his having been vanquished in the duel with
Robert de Montfort.

V. Dicet.
Imag. Hist.
sub ann.
1163.

It is of the highest benefit to society, and
what a wise government will endeavour with
all its skill to procure, that men should not
hope to be greatly honoured, or respected, from
the accidental advantages of birth or wealth,
without personal merit. And this good did
our ancestors derive from the institutions of
which I am treating. They were taught,
that not the highest hereditary dignities, nor
the largest possessions annexed to those digni-
ties, could entitle them to respect, without

BOOK II.

the order of knighthood, and the practice of those duties which the rules of that order exacted from its members; duties quite incompatible with indolence, with effeminacy, with any thing sordid or pusillanimous. These instructions, when they met with good dispositions, would naturally produce great effects: and whoever reads the ancient chronicles of England and France will find, that not only a general passion for military glory, and a most active courage, but some as fair and noble fruits of heroick virtue were raised, by this northern method of culture, as ever grew in the rich soils of ancient Greece and Rome. The *Black Prince*, who was entirely formed on the lessons of chivalry, is alone a sufficient proof of this assertion. I will add that the two last, who appear to have fashioned themselves upon the same model, and to have possessed in perfection all the virtues of their order, were, in France, the *Chevalier Bayard*, and, in England, Sir *Philip Sidney*. Indeed the idea of *honour*, in the sense we understand it, as something distinct from mere probity, and which supposes in gentlemen a stronger abhorrence of perfidy, falsehood, or cowardice, and a more elevated and delicate sense of the dignity of virtue, than are usually found in vulgar minds, seems to have arisen from the notions of chivalry. But here lies the great difference between the institutions of the Greeks and the Romans, and those of which I am treating, in forming men to the service of the publick :
the

the education given to youth by the wisdom of those states, the course of life it brought them into, and the several objects it held out to excite their ambition, tended no less to make them able statesmen, than virtuous citizens and brave soldiers: but the precepts of chivalry, and the whole progress of knightly accomplishments, had little regard to the improvement of the intellectual faculties. Good learning and the arts of policy were so far from being studied with a proper application, that they were generally left to clergymen, as derogatory from the noble profession of arms: and even the armies of those times had in them much less of a strict and regular discipline, than of disorderly valour and impatience for action, which, together with the diversity and uncertainty of the commands to which they were subject under different feudal lords, and the frequent quarrels of those lords, produced great confusion; and often occasioned their defeat, and the miscarriage of their enterprizes. It is also evident, that the multitude admitted to knighthood diminished its dignity, and made it impossible that *the moral rules of the order* should be generally observed.

Whether in the times of which I write we had any *knights bannerets* is not very clear. The name does not occur in our histories or records before the reign of Edward the First. But Duchesne has published a list of French bannerets in the time of Philip Augustus, where those of Normandy, Anjou, and the other dominions

BOOK II. dominions of the house of Plantagenet, are set down. It is more than probable that they enjoyed the same dignity in the reign of King Henry the Second, the latter part of which coincides with the first years of the monarch abovementioned. In reality, this was not a new order of knighthood, but only a higher rank, conferred by the sovereign, or by the general of a royal army, on some of that order, who were richer than others, and were followed into the field by a greater number of vassals. The nature of it, and the manner in which it was given, will best appear by the following instances from history and records. When Sir John Chandos was in Spain with *the Black Prince*, just before the battle of Navarret, fought to restore Don Pedro to the throne of Castile, he came to the prince, and delivered into his hands his own banner folded up, with these words: "My Lord, here is my banner, which I present to you thus; that it may please you to unfold it, and give me leave to set it up in the battle to-day; For (God be thanked) *I have very sufficient means in land and inheritance to support the state and expence it requires.*" The prince and the king of Castile, who stood by him in the field, unfolded the banner and returned it open to Chandos, saying to him these words: "Sir John, here is your banner! May God assist you to gain honour with it by your valiant actions." He then went back with great joy to his people, and said to them, "My

See Froissard
Chron. and
Selden's Tit.
of Honor,
par. ii. c. 5.
Sect. 39.

“ My fellow-soldiers, behold! here is my banner, and yours, if you will guard it as you ought.” They received it very gladly, saying, that, by the help of God and St. George, they would guard it bravely, and do their duty. After which it was left in the hands of William Alery, an English esquire, who bore it in the fight with great valour. I cannot conclude this subject without taking notice of a strange inconsistency, that, in an age which hallowed and consecrated knight-hood, a synod assembled in England, under William the Conqueror, should injoin every knight, or military tenant, who had been with that monarch at the battle of Hastings, to do penance during one year, for every man whom he knew he had slain there, and during forty days, for every man whom he knew he had struck, and, if he was ignorant of the number whom he had slain or struck, to do penance, at the discretion of the bishop of the diocese, one day in every week as long as he lived; or (if he were able) *redeem it with perpetual alms, by building or endowing a Church.* This alternative was, I presume, the real motive, that induced them to be guilty of such a glaring absurdity, as to inflict these penances upon soldiers, for killing or striking their enemies, in the prosecution of a war, which they themselves admitted to be lawful; without even excepting those, *who*, they say in the preamble to these very canons, *did of right owe military service to William Duke of Normandy.*

BOOK II. But there is one of these canons, which, for the benefit of mankind, I wish was received by all nations. It is the sixth; which says,

See Spelman's
Councils, vol.
i. p. 12.

" *Let those who fought only for hopes of a reward* (that is, without being authorised by their duty to their sovereign or their country, and having no regard to the cause they fought for) *know, that they ought to do penance as for murder.*"

Some mention has before been incidentally made of tenures *in frank almoign*, and of tenures *in soccage*; which it will be necessary to explain more particularly here. Lord Coke says, " *no lay-person can hold in frank almoign:*" and according to Lyttelton, upon whom he

See Coke's
Instit. vol. i.
c. 6. l. ii.
sect. 133, 134.

comments, " a tenant *in frank almoign* is " where an abbot, or prior, or other man of " religion, or of holy church, holdeth of his " lord in *free alms.*" With regard to the service required by this species of tenure the same author tells us, " that they which hold " in *frank almoign* are bound before God to " make orisons, prayers, masses, and other " divine services, for the souls of their granter " or feoffer, and for the souls of their heirs " which are dead, and for the prosperity, and " good life, and good health, of their heirs " which are alive. And therefore they shall " do no fealty to their lord, because that this " di vine service is better for them before God " than any doing of fealty; and also because " the words *frank almoign* exclude an earthly " or temporal service." This passage itself is
a proof,

a proof, how necessary it was to restrain the BOOK II.
 zeal of our ancestors from too many grants of
 this nature, by the statute of *mortmain*.

Under the government of the Saxons all the bishops of England, and such abbots and priors as held their lands of the crown, held by this tenure; and in the first part of this work it has been observed, that the changing those estates into baronies subject to homage and fealty, and held of the king by knight-service, was an important alteration made by William the First and his parliament, in the English constitution. But it has likewise been remarked, that it was not understood in the sense of the law, that these spiritual barons, because their lands were thus charged with a military service, were bound to perform that service personally, like the temporal barons. They were either to find other men to do the duty for them, or to pay fines to the king; as appears by this record, which is cited by Madox, in his history of the Exchequer: “ King Edward the Second had summoned his army
 “ to march against Scotland, and had ordered
 “ proclamation to be made, that all persons,
 “ of whatever state or condition, who owed
 “ him service in the army, should be ready to
 “ attend him in person. Nevertheless by his writ
 “ he commanded the treasurer and barons of the
 “ Exchequer to accept of *fines* at the rate of
 “ forty pounds for a knight’s-fee, to be paid
 “ to the king’s use, by *archbishops, bishops,*
 “ *religious persons* (id est, *abbots and priors*),
 “ widows, and other women who owed ser-

BOOK II. "vice in that army, and were desirous to pay
 " fines instead of performing it, *or sending others*
 " *to do it for them.*" Sir Thomas Lyttelton
 also says, in his book upon Tenures, often
 quoted before, *that an abbot, or any other man*
of religion, or a woman sole, that holdeth by such
services, ought not to go in proper person. It
 would certainly have been indecent for any
 ecclesiastics to be obliged to bear arms; and
 the putting them, in that respect, upon the
 same footing as women possessed of knights-
 fees, was agreeable to the wisdom and decorum
 of the law: but there was no impropriety in
 their being required to find the king, of whom
 they held their baronies, either soldiers or
 money in lieu of their personal service; nor
 in their vassals being bound to serve him in
 person. Yet they perpetually endeavoured to
 confound this distinction; as if the functions
 of all who belonged to them had been as sa-
 cred as theirs; and as if their very lands had
 partaken of the holiness of their spiritual
 character. On the other hand, they sometimes
 did *personal service*, notwithstanding the canons
 which the church had made against it, and
 though they might have acquitted themselves
 of their duty to the state by the means above-
 mentioned. As several bishops were younger
 brothers of the most noble families, the mar-
 tial fire in their blood, the example of their
 relations, and the spirit of the times, prevailed
 over the decencies of their profession, and the
 bishop was lost in the baron.

With

With respect to tenure in foccage, Sir T. **BOOK II.**
 Lyttelton says, "that every tenure, which is
 "not tenure in chivalry, is a tenure in foccage." See Coke's
 Instit. vol. i.
 of Soccage.
 c. 5. sect. 118.
 lib. ii. p. 86.
 and lib. ii.
 c. 8. sect. 158.
 But he gives this definition, because he reckons
 grand serjeanty a tenure in chivalry, which
 (as hath been before observed) must be under-
 stood with some restrictions. The same author
 likewise tells us, "that tenure in foccage is
 "where the tenant holdeth of his lord the
 "tenancy by *certain service, for all manner of*
 "*services,*" excluding only knight-service.
 Which description is too extensive for the deri-
 vation he afterwards gives of the word foccage,
 from *foca*, a plough, though that is founded
 upon an authority as old as the reign of Henry
 the Third. Sir H. Spelman observes, from
 the ancient book of St. Alban's, that *socmen* V. Glossary,
 SOCMAN.
 (or tenants in foccage) signified *freemen* in the
 genuine sense of the word. All the king's
tenants in ancient demesne held of him by foc-
 cage tenure: but that all these did not hold by
the service of the plough, the unquestionable
 evidence of Domesday-Book will evince. In
 Glanville's treatise frequent mention is made
 of *free socmen*; and, from what that author says
 relating to them (of which I have given some
 account), it is plain that their property and
 rights of inheritance were taken no less care of
 by the law in his times, than those of tenants
 by *knight-service*; though the latter was the
 higher and more honourable service. Nay, in
 some points it appears that they had more liberty
 than the military tenants, that is, the feudal
 bounds

BOOK-II. bonds were less strict upon them and their families. Yet in Domesday-book they are distinguished from other free tenants, called there *liberi homines*, by not having the power, which these enjoyed, of giving away, or selling, their estates, without leave of their lords. It seems that these *liberi homines* were a remainder of the *alodial* tenants of the Saxon *folkland*, that is, land of the vulgar, opposed to *bocland* or *thaneland*. A certain number of them was necessary to constitute a manor; and therefore, when that number was incomplete, some who held in villeinage were enfranchised to make it up; as appears by the testimony of the record abovementioned. We also find there, that some who were in possession of this *alodial freedom* thought it more eligible to seek a defence and protection, by recommending themselves to the *patronage* of some feudal lord, or even of two lords, if the situation of their lands made it necessary for them to have two protectors. It is probable that this practice, becoming more general, in process of time put an end to this species of tenure. The services which were performed by them to the lord of the manor, in their alodial state, were predial and rustick. A certain number of *free socmen* (as well as of these) appears to have been necessary to every lord of a manor, for holding the pleas of the manor court, which the Saxons called *soke* or *soc*, a word signifying a franchise, or jurisdiction to which a franchise was annexed. And it is from this that some derive

See Domesday-book.

See Spelman's
Gloss. Soc.
Fleta, lib. i.
c. 47.

derive the terms socmen and foccage with BOOK II.
 great appearance of truth. Some of the lands Somner on
 held in foccage were held by *base services*, and Gavelkind,
at the will of the lord: but the definition given f. 133.
 of it by Lyttelton, and by others of the greatest See Coke's
 authority, excludes from it all tenures, where Instit. vol. i.
 the service was *uncertain*. Among the legatine c. 5. lib. 2.
 canons made at London, by the bishop of
 Winchester, in the reign of King Stephen, Spelman's
 I find one which says, *That the plough* Counc.
and husbandman in the fields should enjoy the vol. ii. p. 47.
same peace as if they were in the church-yard.
 This sanctuary given to the tillers of land in
 their own grounds would have been of great
 benefit to the publick, if duly regarded. But
 the civil war paid little respect either to spiritual
 or temporary laws. According to Lyttelton, Lib. ii. c. 10.
burgage tenure was one kind of foccage, but with sect. 162, 165,
various customs, which it will not be necessary 166, 167, 168,
 to enlarge upon here, nor to explain the *local* 169.
customs attending the Kentish *Gavelkind*, or See also
 any other peculiarities which did not affect the Craig, Jus
 general policy of the kingdom. I shall con- Feudal.
 clude this account of the two great divisions of p. 191.
 property, during the times that I write of, in-
 to knights-fees and foccage tenures, with re-
 marking how materially our constitution was
 changed by the statute of the 12th of Charles
 the Second, which declared *that all tenures by*
knight-service of the king, or of any other per-
son, and by knight-service in capite, and by
foccage in capite of the king, and the fruits and
consequences thereof, shall be taken away or dis-
charged;

BOOK II.

charged; and that all tenures of any honors, manors, lands, tenements, hereditaments, &c. are turned into free and common soccage: thus extending that tenure, which, for several ages, was reckoned comparatively mean and ignoble, to all the estates of our nobility and gentry, who would have antiently thought it the greatest injury and dishonour to have had their possessions so leveled with those of the vulgar. Yet to this change, which a gradual alteration of manners and juster notions of government had prepared us to receive, is owing much of the happiness of our present condition. But at the same time it has obliged us to seek for other methods of giving a military strength to the kingdom, consistent with our monarchy, and not dangerous to our freedom: a matter of no little difficulty; but which, if brought to perfection, would secure and perpetuate the advantages, which we have over our ancestors, in the civil policy of the kingdom.

After this general view of the state of the nobility, gentry, and freeholders, under the kings of whose government this history treats, it will be proper to give likewise some account of those persons to whom the national liberty did not extend, though in respect to their numbers they were no inconsiderable part of the people.

In Domesday-book, that great record of the antient state of this kingdom, a distinction is made between *villeins* who were affixed to a manor,

manor, and others of still a lower and more servile condition, distinguished by the names of *bordarii*, *cotarii*, and *servi*, the two first of which seem to have rented small portions of land, and the last to have been hinds, or menial servants, abiding in the families of their lords. According to Spelman, these were again subdivided into *nativi* (slaves by birth), and *bondi* (freemen who had voluntarily and by bonds which they had given, put themselves into servitude, for the sake of a maintenance). Yet in other places he gives the appellation of bondmen to all below the degree of *ceorls* or *free socmen*. And it must be observed, that, in Glanville, the *nativi* are comprehended under the term *villenagium*, which is used by that author synonymously with *servitude*, and in opposition to *freedom*, as a *state*, not a *tenure*. His whole fifth book relates to this subject, and contains the methods and forms of law which then were in practice, for the decision of disputes between different lords concerning their rights to a villein, or where a person who was in a villeinage (*in villenagio positus*), or was claimed as a villein, asserted himself to be free. The trial was required to be in the king's court; and the proof, by producing in court the nearest relations to the person so claimed, or so demanding his freedom, and proving their condition. If it appeared that they were free, he was freed; but, if a dispute or doubt arose concerning their liberty, or whether

BOOK II.

V. Spelman's
Gloss. BOR-
DARI, CO-
TARIUS,
SERVUS,
NATIVUS.

See his treatise on Feuds and Tenures, c. 5. 7.

BOOK II. ther those produced on either side, as the nearest relations, were in fact so or not, recourse was had to a jury of the neighbourhood, to try the fact, that it might be determined by their verdict, according to which the judgment was to be given. If a free woman was married to a *villein by birth*, she lost her freedom during the life of her husband, and their children were born to the same state of servitude, which was continued to all the succeeding generations, unless their lord enfranchised them by his own act. Nay, we are told by Glanville, that, in his time, if a freeman married a woman born in villeinage, and who actually lived in that state, he lost thereby the benefit of the law (that is, all the legal rights of a freeman), and was considered as a villein by birth, during the life-time of his wife, on account of her villeinage. He says also, that if a man born in villeinage had children by a woman born in the same state, under a different lord, the children ought to be equally divided between the two lords. This was absolutely putting children upon the same foot as cattle, or other stock on a farm, without the regard that is due to the inherent freedom and dignity of human nature.

Lib. v. c. 9. According to Glanville, a villein might be enfranchised several ways. As, for instance, if his lord, being willing to give him his liberty, had proclaimed him free from all right that he or his heirs might have to him, or had given
or

or sold him to another, *in order to his being* *infranchised*. But he says, that no villein could acquire his freedom with his own money: for, notwithstanding his purchase, he might, according to the law and customs of the kingdom, be brought back into villeinage: because all the goods of a villein born belonged to his lord, and therefore from him he could not redeem himself with his own money; but with that of another man he might be redeemed, and maintain his freedom for ever against his lord. The same author says, “if a villein
 “born had remained quietly (that is, un-
 “claimed by his lord) a year and a day, in
 “any *privileged town*; so that he had been
 “received into their community or *gyld* as a
 “citizen, he was thereby freed from his vil-
 “leinage.” By *privileged town* is meant a town that had franchises by prescription or charter; and this communication of liberty from thence to a villein, residing among them so short a time, shews a high regard in the law to such corporations, and likewise a desire to favour enfranchisements as much as the settled rules of property would admit. According to Bracton, a quiet residence, of a year and a day, upon the king’s demesne lands, would also enfranchise a villein who had fled from his lord. In one of the laws of William the Conqueror, it is said, “If any one is willing to
 “free his slave, let him deliver him by his
 “right hand to the sheriff in the full county
 “court, and proclaim him discharged by
 “manumission,

Ibidem,
 See also Leges
 Gul. Conq.
 66. Wilkins,
 p. 229.

See Wilkins
 Leges Gul.
 Conquest. 65,
 p. 228, &
 229.

BOOK II. “manumission, from the yoke of his servitude; and let him shew him the doors open and his way free, and put into his hands *the arms of a freeman*, namely, a lance and sword: which being done, he is made a freeman.”

This ceremony is remarkable; as it shews that, in England, during the times I write of, the bearing of such arms was a privilege so confined to freemen, that the imparting it to a slave was a mark of infranchisement. It is observed by Glanville, “that, although any person might make his slave (or villein born) a freeman *with respect to himself and his heirs, with respect to others he could not*. For, if any such villein, so freed, was brought into court, to hold any plea against a stranger, or *to wage law* (that is, to purge himself or others by oath), he might be justly removed from thence, if his birth and villeinage were objected to him, and proved in court, even though he had been made a knight after having been so infranchised.” One may learn, from this passage, how great a jealousy there was in the law of those times with regard to judicial proceedings, when it went so far, as to exclude from them any man born in servitude, though he had not only obtained his freedom, but even the high dignity and honor of knighthood. According to Bracton, a slave infranchised might be deprived of his liberty, and brought back to his former servitude, for ingratitude to his master. But, from the same author

Lib. i. c. 6.
p. 5.

author we learn, that the lives and limbs of BOOK II.
 slaves were under the protection of the king;
 so that, if a lord killed his slave, he would not L. i. c. 9.

be less punished, than if he killed any other person. The chastity of female slaves was likewise protected from all violence by the law of those times; and the goods of persons in villeinage were secured against all others except their lords. These were some mitigations of a state that otherwise would have been insupportable; but, upon the whole, the condition of the villeins in this kingdom was worse than that of the slaves among the ancient Germans: for those (as Tacitus tells us)

had houses of their own, given to them by their master, which they governed at their own pleasure, only paying to their masters a V. Tacitum de moribus Germanorum.

rent of corn, or cattle, or cloaths, without yielding to them any further obedience or service. Nor, in Germany, was the domestick or menial service in families performed by slaves (as among the Romans), but by the wives and children. Indeed the German and Go-

thick nations, in this and many other Tacitus, ut supra.

instances, shewed more humanity and regard to natural justice, than the Romans, who called them *Barbarians*. But how it happened that in England the Saxons departed so much from the ancient lenity of their country, in the treatment of their slaves, I cannot tell.

Certain it is, that the Normans did not introduce this kind of servitude into England. V. Leges Ælfredi, apud Wilkins.

There is a remarkable law of Alfred the Great, Leg. 11.

BOOK II. which enacted, "That whoever *bought* a
 " Christian slave should give him his freedom
 " *gratis*, at the end of six years. And he
 " was to depart with the cloaths he had
 " brought with him, and with his wife, if
 " he was married when he came to his lord.
 " But, if his lord had given him a wife, the
 " and the children he had by her are declared
 " to belong to his lord. If he refused to go
 " away, because he was unwilling to part
 " with *them*, or his *heritage* under his lord,
 " then his lord was to lead him to the door of
 " the church, and bore his ears, as a mark
 " that from hence-forward he should always
 V. Leg. 12. " remain his slave." It also appears, by another
 statute of the same king, "that a freeman
 might sell his daughter to another, as a slave;
 but she was not to be in all respects upon the
 foot of other slaves; nor could her father sell
 her to any body *out of the kingdom*. If her
 master was not pleased with her after he had
 bought her, he was to enfranchise her, and let
 her go to some foreign country. But, if he
 permitted his son to have her for a concubine,
 he was to make her a present, and see that she
 was well cloathed; and, as a compensation for
 the loss of her chastity, pay her a marriage por-
 tion; which if he did not perform, she was
 made free." I need not observe that the suf-
 fering a parent to *sell his daughter into slavery*,
 under any regulation, was a bad and barba-
 rous custom. It was probably allowed for the
 sake of easing poor families of too great a bur-
 then

then of children, which in many countries has occasioned much cruelty and injustice. What in these statutes was prohibitory, and favourable to slaves, did not extend to restrain or lighten the servitude of captives taken in war, of whom, and of whose posterity, the greater part of the domestick or predial servants, among the Saxons, undoubtedly was composed. In the collection of laws enacted by King Canute, there is one which frees a slave, whose master had obliged him *to work on a holiday*, besides punishing the offence by a fine or mulct to the king. But it may be questioned whether this was the effect of humanity, or merely of superstition. The laws and policy of the Normans were favourable to enfranchisements; so that, in and after the times of which I write, the number of slaves must have continually decreased in England; but yet, as in Lyttelton's Tenures, which were written during the reign of King Edward the Fourth, there is a whole chapter concerning the state of persons in servitude, it is evident that many such were still remaining in those days. The practice of enfranchisements growing afterwards more and more frequent, those who before had held in villeinage became copyholders, and the domestick or predial slaves were made free servants and labourers; some even obtained freeholds; and at length all remains of the ancient servitude were abolished. Nor is this a light difference in the comparative excellence of our present constitution above our

V. Leg. Canuti 69.
Wilkins.

ancient, and even above the admired governments of Greece and Rome. For, surely, whatsoever dishonours human nature, dishonours the policy of a government which permits it; and a free state, which does not communicate the natural right of liberty to all its subjects who have not deserved by their crimes to lose it, hardly seems to be worthy of that honourable name.

In the time of which I write, every county was divided into hundreds and tythings, which last was composed of ten freeholders with their families, who were all pledges to the king for the good behaviour of each of them, and obliged, if any person comprehended in the tything had committed a crime, to bring him to justice, or purge themselves, by the oath of the chief man of the tything, both of the guilt of the fact, and of being parties to the delinquent's escape. Every master of a family was also made a pledge for the good behaviour of his household, in which description it appears that all his villeins were contained. The first author of this remarkable plan of *police*, which has been mentioned with lavish praise by some historians and lawyers, was King Alfred the Great. Notice is taken of it in the laws of other Saxon kings, particularly in some ascribed to Edward the Confessor, which are quoted by Bracton, l. iii. c. 10. and upon his authority I incline to think, that so much of that compilation, as concerns this matter, is genuine; though other parts of it are

are not. The law of *frank pledge* was confirmed by particular statutes of William the Conqueror; and we have one of Henry the Second, which says, "That it shall not be lawful for any person in a borough or town to lodge in his house any stranger, whom he would not put under pledge, above one night, unless such stranger had a reasonable cause to alledge for his stay, which his host was required to declare to his neighbours; and the guest, when he departed, was not to go off, but in their presence, and by day." This exceeded the rigour of the ancient Saxon laws, which allowed two nights to a guest, without being put under pledge. I will say no more on this subject, but that these and other regulations relative to it, which need not be mentioned here, were much too strict a restraint on the intercourse of commerce and social life in quiet times, though they were an admirable security against crimes and disorders, and might be necessary in those ages when they were established or enforced.

Of the jurisdiction of the county or hundred courts, and of the king's court, in which presided the great justiciary of England; as likewise of the methods of trial then in use; and of the criminal law of this kingdom from the earliest times to those of Henry the Second inclusively; I shall treat in another place, when I consider the institution of annual circuits to be made by itinerant justices, and the statutes

BOOK II. enacted by that prince at Clarendon and Northampton.

It is remarkable, that, during the life-time of King Henry the Second, the Pandects of Justinian were discovered at Amalphi; and in emulation thereof compilations were made of the canon and feudal laws at Bologna and Milan; and the first treatise upon the English laws was written in England: so that this age, however barbarous in other respects, made great advances in jurisprudence, the chief light and perfection of civil society.

See Giannoni
Hist. de Napol.
l. xi.
c. 2.

The Code, the Novellæ, and the institutes of Justinian, had indeed been read and explained in the school of Irnerius at Bologna, before the Pandects were found by the Pisans at Amalphi, when that city was taken by them, in the year eleven hundred and thirty-seven: and in France there were some copies of the Pandects themselves, as appears by citations from them in Ivo de Chartres antecedent to that time: yet the publication of this most ancient and authentick copy of them in Italy, where no other remained, gave a new spirit to the study of the Roman civil laws in that country first, and very soon afterwards in all parts of Europe. About fourteen years from the taking of Amalphi, viz. in the year eleven hundred and fifty-one, under the pontificate of Eugenius the Third, Gratian, a Benedictine monk at Bologna, published his *Decretum*, which was composed on the model
of

of the Pandects, being a compilation, or digest, of the whole canon law, as those were of the civil law. And, as those contained a collection of the answers and opinions of all the greatest Roman lawyers, so did this of the opinions, decrees, and judgement, of fathers, doctors, popes, and councils. Thus far it was easy to carry imitation: but the Pandects are admired, by the most judicious criticks, for their accuracy, clearness, and elegance; whereas the *Decretum* is a confused, immethodical compilation, full of errors and forgeries. Yet, as it was calculated to promote the power of the church, and particularly of the papacy, the applause it met with from the clergy and the see of Rome was so great, that it soon obtained an authority superior to all the former collections, and became the great code of ecclesiastical law, on which the popish hierarchy supported their enormous pretensions. Such an union was also formed between the civil and canon laws, though in many points very different, that (to use the words of a learned writer) *they coalesced into one system and concordance, and were so tied together, and in so near a degree of relation, that the one could not subsist without the other*: for which he gives this reason, “that the canon law was originally derived from the imperial constitutions; and whatever is most excellent in it cannot be denied to have flowed from the civil law.” Certain it is, that these laws, in the age I write of, and long afterwards, afforded a mutual

BOOK II

V. Craig,
Feudor. l. i.
tit. 3. p. 2.Craig, ut
supra.
Giann. l. xiv.
c. 3.
Father Paul
De rebus be-
neficiariis,V. Arthur
Duck de Auc-
toritate juris
civilis Rom.
c. 7. p. 98.

BOOK II. tual support to each other; the professors of both were the same; and it was necessary for any clergyman, who desired to rise in the church, to be a civilian and a canonist.

V. Seld. Dissert. in Flet. p. 1094, 1095. last edit. of his works, vol. iv.

There is a remarkable passage in one of the epistles of Peter of Blois, which Mr. Selden has taken notice of in his dissertation upon Fleta. The words are these: "In the house of my master, the archbishop of Canterbury, there are a set of very learned men, expert in all the rules of justice, as well as other parts of prudence and knowledge. It is their constant custom, after prayers, and before they dine, to exercise themselves in reading, in disputations, and in the decision of legal cases. To us all the knotty questions of the kingdom are referred; which being brought forth into the auditory, where all the company assembles, every one, according to his rank, whets his understanding to speak well, without wrangling or obloquy; and, with all the acuteness and subtilty that is in him, declares what he thinks the most prudent and sound advice. And, if it pleases God to reveal the best opinion to one of the lowest among us, the whole assembly agrees to it without envy or detraction." The persons who held these assemblies in the archbishop's palace, and to whom *the most knotty questions of the realm were referred*, were probably clergymen and civilians. But it must be observed, that, in this age, clergymen were also *common lawyers*; many prelates were employed

ployed by the king as his justices; and William BOOK II.
 of Malmſbury ſays, that, in the times when V. Malmſb.
 he wrote, *there was hardly an eccleſiaſtick, who* l. iv. de W. II.
was not an advocate. The questions referred f. 69. 2. 10.
 to them might be alſo of a political kind, con-
 cerning the general laws of nations, the rights
 of embaffadors, the obligations and conſtruc-
 tions of treaties, and all the rules of peace and
 war. Nevertheless I do not doubt that, un-
 der the government of Henry the Second, the
 civil law interwove itſelf, to a certain degree,
 into the ſyſtem of Engliſh jurisprudence. The
 real excellence of many of its rules and deci-
 ſions, in caſes of private property, muſt have
 greatly recommended it to ſo inquiſitive and
 judicious a prince, and to thoſe who held the
 chief offices of judicature in his kingdom. But
 I ſhall have occaſion to obſerve, during the
 courſe of this hiſtory, that, in the puniſhment
 of offences againſt the ſtate, there is reaſon to
 think their regard to this law was carried much
 too far, and made them deviate in ſome in-
 ſtances from the genius and principles of the
 Engliſh conſtitution, to the great prejudice of
 natural juſtice. Yet that, in other points, the
 law of England received great improvements,
 by the ingraftments made from the civil law,
 as well in this reign, as under many ſucceed-
 ing kings, can, I think, no more be diſputed,
 than that it was a wiſe jealousy and cau-
 tion in the parliament, under ſome of thoſe
 kings, to prevent it from acquiring too great
 an authority, and encroaching too much on
 the

BOOK I. the common law of England; especially in matters relating to government and the liberty of the subject.

V. Craig,
Feudor. l. i.
tit. 6. p. 46,
47.

P. 49. 50.

About the year eleven hundred and seventy, a compilation of the feudal laws, as practised in Lombardy, was published at Milan in two books, by two senators and consuls of that city, Gerardus Niger, and Obertus de Odo. In imitation of the *Pandects*, they contain the opinions of lawyers, on questions concerning the feudal customs, with some imperial constitutions relating to feuds. They were long afterwards divided into five books by Cujacius, their best commentator; before whose time they had obtained so great an authority in many countries of Europe, that they were received in courts of justice as parts of the civil law. The learned Craig ascribes this authority to imperial constitutions contained in them, or by which they were confirmed: but Du Moulin, Giannone, and others say, that, like the books of Justinian, they acquired by degrees the force of laws, from usage, from the approbation of the people, and from the tacit consent of princes, who permitted them to be publickly taught in universities, enriched with commentaries, and cited in tribunals, for the decision of causes. It does not appear that in England any such regard was paid to them; though in many points our laws were similar, as being derived from the same principles, and directed to the same ends. Yet it is not improbable, that, even in the latter times of king Henry the Second,

and

and still more in the next century, some parts of BOOK II.
 the English laws, concerning feudal estates, may
 have been regulated according to their decision,
 by the statutes then made, and, in the determi-
 nation of doubtful cases, by the opinions of
 the judges.

It is a notion of many eminent writers,
 that the whole system of feuds was derived Feudor. l. i. tit. 6.
 from the Lombards. Sir Thomas Craig, one

of the best who has ever treated that subject,
 seems to incline to this opinion, and says, that
 the Lombards, after they were subdued by
 Charlemagne, not only retained their ancient
 customs, but, on the return of that emperor
 into France, transmitted them with him into
 the furthest parts of that kingdom: he might
 have added, into Germany, and other parts of
 the empire, where they also prevailed at that
 time. But others ascribe the origin of the See Madox's
Baronia,
p. 279.
Sir W. Tem-
ple's Essays.
 feudal customs to the Franks, and some to
 the Goths. I would observe, that, if they
 were really confined to Lombardy till that

country was subjected to Charlemagne, as the
 Anglo-Saxons had settled themselves in Britain
 some ages before that event, the customs they
 brought with them, and established in this
 island, could not have been feudal. But, in See Spelman
on Feuds and
Tenures, c. 2.
p. 5.
 truth, all the German nations, the Saxons,
 the Franks, the Lombards, the eastern and
 western Goths, had some general notions of
 the feudal policy, which were gradually
 systematised, and brought into that state,
 which we find established in the empire under

Conrade

BOOK II. **Conrade the Salique, and in France under Hugh Capet.**

Feudor. l. i.
tit. 4.

C. iv.

C. vi.

Sir Thomas Craig has distinguished four states of the feudal law, its infancy, its childhood, its adolescence, and its maturity. To the first he assigns the times between the first overflowings of the northern nations, and the year six hundred and fifty; to the second, the times, in which fiefs, that before were annual, or at most for life, were extended to the sons of the vassal, and no further, viz. from the year six hundred and fifty to the year eight hundred, when Charlemagne was crowned emperor. The third state, on the authority of the books of feuds abovementioned, he reckons to have continued from the times of Charlemagne to those of Conrade the Salique, during which he says that the greater and lesser vassals had begun to use the farms, or lands, granted to them, as their own; and, though they were not the true lords of them, yet they acted as if they were, being almost secure of the will of their lords, provided they performed the services agreed on between them. He also takes notice that Charlemagne was the first, who, by particular grants, changed some benefices into feuds, that were permitted to descend to the eldest sons of the vassals; but says, that neither in his reign, nor for some years afterwards, did such inheritances become a general law; but were rather particular privileges, the number of which was much increased under his grandson Lotharius, yet still
with.

without the authority of any law: but **Conrade** the Salique made one, about the year one thousand and twenty-eight, which not only confirmed the inheritance of fiefs to the sons and grandsons of the vassals, but permitted one brother to succeed to another in his paternal estate. With this constitution therefore Sir Thomas Craig concludes the third state of feuds; having before observed that in France a law had been made by Hugh Capet, which perpetuated the succession to fiefs in the first degree; and that both the vassals of the king, and those who held of them, possessed their fiefs, not precariously, nor at the will of another, but by a right established in themselves. The fourth state, or maturity of the feudal law, he extends from the above-mentioned epoch, viz, the constitution of Conrade the Salique, made in the year one thousand and twenty-eight, beyond the times of which I write; when, by a gradual extension of the feudal rules of inheritance, feuds were permitted to descend to collaterals, as far as the seventh degree. It must be observed, that, before the publication of the Books of Feuds at Milan, some parts of the feudal law had been committed to writing, by the orders of the Emperor Frederick, surnamed Barbarossa, who was the first that had reduced them to any form of rule: but I do not find that the Books of Feuds received any sanction from the authority of that prince; whereas we are assured that he greatly favoured the study of the Pandects and other

BOOK II.Vid. Rade-
vicum, l. i.
c. 7.V. Radev. de
gest. Frederic,
l. ii. c. 5.

BOOK II. other books of the imperial law; and that the professors of that law were consulted by him in his most important deliberations. Unhappily for him, one of these doctors, named Martin, maintained a thesis, at Roncaglia, against another, named Bulgaris, in which he asserted, that the Roman emperor was, by right, the absolute master of the whole world, and of all the goods of particulars, so that he might dispose of them at his pleasure. This most abominable doctrine he drew from some parts of the imperial laws, and particularly from some words of Ulpian ill-understood: but though his adversary, who was professor of the civil law at Pisa, endeavoured to vindicate that law from the imputation of so destructive a principle, the flattering doctor prevailed: his opinion was confirmed by a majority of professors; and Bartolus, one of the most celebrated commentators on the books of Justinian, declares it to be a *heresy* to contradict or deny it. In consequence of this judgment, Frederick set up such claims of universal and despotic authority, that, though in all other respects an excellent prince, he justly raised in the Lombards and other people of the empire such an alarm for their liberties, and in other kings such a jealousy, as proved very troublesome and dangerous to him, but of great advantage to Rome, which headed the party of male-contentants against him. Indeed, the extravagance of papal pretensions, in that age, would probably have occasioned the downfall of the popes,

See Giannoni,
l. xii. c. i.

V. Arthur
Duck de Aucto-
ritate juris
civilis, l. i.
c. 2. sect. 11.

popes, notwithstanding all the aid they drew from the superstition and ignorance of the times, if the almost equal extravagance of the imperial pretensions had not given them a party, which joined with, and supported them, on political motives. But it must be observed, that whatever countenance the Roman laws, or the professors of them, might afford to these claims of the emperor, the genius and spirit of the feudal laws were so absolutely contrary to them, that, without destroying those laws, which then were established over the greatest part of Europe, and to the support of which he himself had given a new sanction in the assembly at Roncaglia, it was impossible for him to make them good.

The *Decretum* of Gratian, and the Books of Feuds, having been published in emulation of the *Pandects*, a treatise was also written, about the latter end of Henry the Second's reign, on the laws and customs of England, not professing to be a complete collection of all of them (which the author says, in his preface, would be impossible, from the confused multitude of them, and from the ignorance of writers) but to reduce to writing such of them as were in general and frequent use in the king's court. See Glanv. Proleg.

The title prefixed to this book in the printed edition of the year sixteen hundred and four, and which I find agreeable to an ancient manuscript in the Harleian library, says, *it was composed in the time of King Henry the Second,*
the

BOOK II. *the illustrious Ranulph de Glanville, who of all in those days was the most skilled in the law of the realm and the ancient customs thereof, then holding the helm of justice.*

V. Proleg.
Glanville.

C. vi. p. 131.

From these words I infer, that this treatise was not written by Ranulph de Glanville himself, but by some clergyman, under his direction and care; I say by some clergyman, because it is written in Latin, which could hardly be done by a layman in that age. The writer apologizes for the style of his work, from the necessity of using the terms of law, with a view to make it more instructive. But though, for this reason, the Latin is frequently impure, the style, in general, is clear, concise, and proper for the subject; and in method it far exceeds either the *Decretum* of Gratian, or the Lombard Books of Feuds. It is called, by Lord Chief-justice Hale, *that excellent collection of Glanville*; and certainly, if the matter of it was dictated by Glanville, and the writing supervised, the honour of it may with more reason be given to him, than to any person who penned it under his directions. The title says further, that the treatise only contains those laws and customs, according to which pleas were held in the king's court, at the Exchequer, and before the king's justices, *ubicunque fuerint*. In the manuscripts from which this edition was printed, the whole treatise is divided into fourteen books: but I have seen one, which seems to be of the age of King John or Henry the Third, wherein the divisions are different

different, and Sir Thomas Craig is of opinion that it was originally in four books; as the Scotch treatise, entitled *Regiam Majestatem*, which is almost a transcript of it, has no more. I cannot assent to this opinion, because I am convinced that the *Regiam Majestatem* was not published before the reign of David the Second; and we have copies of Glanville which are undoubtedly prior to that time, and are not in four books. The supposition that the Scotch treatise was the original, and that Glanville transcribed from thence the work which goes by his name, will hardly be admitted by any person, who considers the state of England and Scotland in the reign of Henry the Second. The carrying back the introduction of the feudal law contained therein to the times of Malcolm the Second, instead of Malcolm the Third, and understanding the David, by whose command the author says he compiled it, to be David the First, instead of David the Second, are also notions so discordant to the clearest historical facts, and so discredited by the internal evidence of the book itself in many points, that one is amazed how they could ever have obtained any credit among some persons of eminent parts and learning. Not to mention the arguments of Sir Matthew Hale and other Englishmen of the greatest authority, in opposition to them, Sir Thomas Craig, Feudor. 1. i. tit. 8. sect. 7. the most judicious of all the writers on feudal law, and whose work does honour to Scotland, speaks of the *Regiam Majestatem*; as stolen

VOL. III. P from

BOOK II.

See Essays
upon several
subjects relat-
ing to British
Antiquities,
Essay I.

from Glanville's work, and treats the opinion of his countrymen, who supposed it be an original account of their laws, as a *miserable blindness and delusion*. A late ingenious and learned author, who fills one of the seats of justice in that part of the united kingdom with an eminent reputation, has likewise brought the most convincing and irrefragable arguments to shew that it could not have been published in Scotland in the reign of David the First; particularly this, that the author of it appears to be well acquainted with the civil law, the knowledge of which had hardly begun to penetrate into England before the death of that monarch, and must, in all probability, have been much longer in making its way into Scotland, which in those days received its learning of every kind from England. I will only add, that the high encomiums on the then reigning king, in the prefaces to both these books, on account of victories gained by him, and successes in war, the fame of which had filled all lands, are very ill applicable to David the First.

V. Wilkins
Leg. Ælfredi,
P. 344

The treatise ascribed to Glanville is the most ancient of our law-books now extant; but, many ages before, collections had been made of the Anglo-Saxon laws by some of the kings of that nation. Alfred the Great declares, in the preface to his laws, that he had collected and consigned to writing many of those customs, which had been anciently observed in England, and which he approved; rejecting
or

or altering those he disapproved, with the advice of *his wise council*, (that is, of the Saxon parliament, or *witena-gemote*). He particularly mentions the laws of Ina his ancestor, of Offa king of the Mercians, and of Ethelbert the first Christian king of the Anglo-Saxons; out of which he had selected those which he thought the best, and omitted the others. His son, King Edward the elder, begins his laws with a command to his judges or magistrates, that they should give just judgments, according to the laws, as contained in their *Dombec*. This Spelman and Wilkins call, in their Latin translation, *liber judicialis*; and probably it was the collection spoken of by King Alfred in the words above-cited, as no mention is made of it before the times of that prince. It retained its authority till after the reign of King Edgar, in one of whose laws there is a reference to it concerning a penalty or mulct. But that king, in another statute, declares and ordains, that every man, whether poor or rich, shall enjoy the benefit of *the common law*; which all our ablest lawyers, who have treated thereof, as well as the best of our antiquaries, unanimously affirm, to have then consisted, for the most part, of unwritten customs. The same prince, in another law, grants a liberty to the Danes, who were subject to him in England, of chusing for themselves what form of law they liked best, but commands the English to observe what he and his *wise-men* had added

BOOK II.

V. Leges
Eadwardi,
Wilkins,p. 48.
V. Spelman's
Gloss. Dom-
BEC.V. Wilkins
Leges Ead-
wardi, p. 77.
Leges poli-
ticæ.

Ibidem, p. 80.

BOOK II.

V. Hoveden
Annal. Part.
post. p. 347.

Hist. of the
Common
Law, c. 3.
p. 55.

See Hickes
Differt. p. 25.
et alios.

to the most ancient laws of his realm, from the present exigences of the nation. Hoveden says, that, after the death of Edgar, the law of England lay asleep for sixty-seven years, but was awakened and confirmed by Edward the Confessor, and therefore was called *his law*, not as being first enacted, or made, by him, but because it had been neglected and forgotten from the decease of his grandfather, King Edgar, who was said to have been *the first founder of it*, down to his times. Yet we find some parts of that law renewed and confirmed by those of Canute the Dane; and it is apparent, from the words of Edgar himself, that, although he enacted some new laws, he only confirmed the *common law*, of which the origin (to use the expression of Lord Chief-justice Hale) is as undiscoverable as the head of the Nile. But there is good reason to believe, that Edward the Confessor not only revived and confirmed that law (as Edgar had done before him), but made a new compilation, drawn out of all the laws, Mercian, Danish, and West-Saxon, which had prevailed in all the different parts of the kingdom, uniting them into one, by the advice of his *witena-gemote*, or parliament. The collection published under the name of this prince's laws by Lambard and Wilkins, and said, in the title of them, to have been confirmed by William the Bastard, is justly rejected, as spurious, by the most learned critics. But those which he did compile, and

and in which it is probable that there was a confirmation of all the *unwritten customs*, not condemned or altered thereby, were received and restored to the nation by William the Conqueror, *with certain alterations and additions which he had enacted* (as one of his statutes declares) *for the benefit of the English*. Some of these laws so confirmed, and published by him in the French or Norman language, the reader will find a transcript of, as translated into Latin by Whelock and Wilkins, in the Appendix to the first book of this history, together with all the other statutes, made by this king, which we have reason to believe are genuine, and which are not penal, or relating to criminal matters; all of that nature being reserved to be published in the Appendix to the last volume, together with those enacted by King Henry the Second. Of the laws of Henry the First I have given only his charter; the rest published by Wilkins, though they have got into *the Red book of the Exchequer*, being certainly spurious. The charter says, *I restore to you the laws of king Edward, with those emendations that my father made therein by the advice of his barons*. Whatever therefore was not altered in *that law* by his father stands confirmed by this clause; and *that law* was the whole body of Saxon laws and customs which had been established under the government of Edward the Confessor. The charter of King Stephen expressly confirms *all good laws and good customs which the nation*

BOOK II.

See the Appendix to the first book, numb. II. l. 63.

BOOK II. *had enjoyed in the time of Edward the Confessor.*

Ibidem.

Customs here seem to be mentioned in addition to *laws*, for the sake of including the *unwritten* with the *written* or *statute laws*. Henry the Second, by his charter, confirmed that of his grandfather: so that from the reign of King Edgar to the first of the Plantagenets, inclusively, *the common law* has received repeated sanctions, and been delivered down as the great birthright and inheritance of the nation. But that several statutes, or acts of parliament, made both under the Saxon and Norman kings, before and during the times of which I write, either to explain or alter that law in many points, have been lost, though the practice grounded upon them continued, I have not the least doubt. It also appears that some feudal customs and prerogatives of the crown, arising out of that policy, the use and exercise of which had not been complained of under the gentle administration of Henry the Second, were afterwards limited, or taken away, by express laws: and, on the other hand, it is well observed by Lord Coke, that, "*to his never-dying honour, many acts made*

Coke's Instit.
vol. ii. c. 15.
note, p. 29.

in the reign of Henry the Third do refer to his reign, that matters should be put in use as they were of right accustomed in his time."

I cannot better conclude this subject, than with the encomium made upon him, in the preface of the treatise ascribed to Glanville, with relation to his civil government, and more particularly to his conduct in the administration

n stration of justice. The words are these: **BOOK II.**

“ How justly, how discreetly, and how mercifully, in time of peace, he, the author and lover of peace, has behaved himself towards his subjects, is very well known; when such is the equity of his Highness’s court, that not one of the judges there has so hardened a front, or so rash a presumption, as to decline from the path of justice, or give any opinion contrary to truth. For there the poor is not oppressed by the power of his adversary, nor does the favour or credit of friends drive any person from the seat of judgment. All the proceedings are grounded upon the laws of the kingdom, *or reasonable customs established by a long usage*: and (what is still more laudable) our king does not disdain to be directed by the advice of such of his subjects as he knows to excel others in gravity of manners, in knowledge of the law and customs of the realm, and whom he has found by experience to be the most prompt and expeditious, as far as reason and justice will permit, in determining causes and ending suits, *by acting sometimes with rigour, and sometimes with lenity, as they see to be most proper.*”

On these last words I would observe, that, as in those days there was no distinct court of equity, the judges of the king’s court had probably a power of mitigating in some cases the rigour of the law. But, however this may have been, the testimony given to the wisdom

BOOK II. and goodness of Henry, in the first of royal duties, the administration of justice, if not by the grand-justiciary himself, yet certainly by one who wrote according to his sentiments, is of no little weight: and it will be shewn, from still more unquestionable evidence, from the acts of that prince, and from the reverence paid by foreign powers to the fame of his justice, that the praise he received from his subjects, in this and other contemporary writings, was not adulation.

Of what orders of men the English parliament was composed, in the times of which I write, is a question much disputed, and which can never, I believe, be so absolutely decided, as to put an end to any difference of opinion about it; especially if the controversy should be supported and sharpened (as it has formerly been) by the spirit of party, or by, what is no less unfriendly to the discovery of truth, attachment to a system. But happily the enquiry is rather matter of curiosity than real importance; because the right of the commons to a share in the legislature and national councils, even according to the hypothesis of those who are most unfavorable to them, has antiquity enough to give it all the establishment which can be derived from long custom, and all the reverence and authority which time and experience can add, in the opinions of men, to the speculative reason and fitness of wise institutions. I therefore treat of this question, rather as it is a necessary part of my subject,

ject, than as worthy in itself of any very BOOK II.
 anxious investigation: nor do I pretend to do
 more than draw together some rays of light,
 scattered in a few important records, and in
 some passages of the most authentick contem-
 porary historians, submitting the result of them
 to the judgement of the reader, with very
 great diffidence of my own.

If we look to the best accounts of the origi-
 nal customs of the ancient German nations, we
 shall find, that in their communities all the
 freeholders enjoyed an equal right with the no-
 bles to assist in deliberations *on affairs of great
 moment*. When they made their first settle-
 ments in any foreign country, and while their
 numbers were moderate, this right might be
 exercised, without any great inconvenience, by
 the whole body of the freeholders assembling
 together on open plains. That it was exer-
 cised in this manner by the Anglo-Saxon peo-
 ple, after they came into Britain, we are as-
 sured by an historian of no mean authority, Vid. Matt.
Westmon.
sub ann.
1213.
 Matthew of Westminster, who says, “ that 15 Johan.
 the meadow near Staines, in which the great
 charter was granted by King John, had the
 name of *runemeed*, which, in the Saxon lan-
 guage, signified *the meadow of counsel*, be-
 cause from ancient times it had been usual to
 consult there upon business which concerned the
 peace of the kingdom.” But this custom had
 been disused under the government of the
 Normans, and (so far as I can discover) for
 some time before; perhaps from the time that
 the

BOOK II

the Saxon heptarchy was united into one kingdom. Nor do I find a single instance of its being ever revived, till that extraordinary meeting in the reign of King John; all the parliaments, or great councils, whereof we have any account before, having been held in churches, abbies, or royal castles. It should seem therefore, that, if the right of the freeholders continued, the greater part of them must have exercised it, not personally, as they did in ancient times, but by representatives. We are assured, by a record which Dr. Brady has cited, that, so late as in the fifteenth year of King John, not only the greater barons, but all the inferior tenants in chief of the crown, had a right to be summoned to parliament by particular writs. We may therefore conclude, that, till that time, no representatives had been sent by any of these to serve for them in parliament; but they were accustomed to attend the great councils of the nation in their own persons. Nor were they become so numerous, as that they might not be contained in the body of a church, or the great hall of an abbey or a castle. But these were far from being all the freeholders of the kingdom. Under that description were comprehended all who held of the barons, either by knight-service or free soccage, and all the possessors of alodial estates, with all the free inhabitants of cities and boroughs not holding of the crown. The number of these was too great to be contained in any building,
how

See Brady's
Answer to
Petit, in his
Introduction
to the Hist.
of England,
p. 40. 68.

how spacious soever. We are therefore to enquire, whether, during the times of which I treat in this history, all these men were either wholly excluded from parliament, or were present there by any kind of representation. Some learned writers have supposed, that every superior lord, who held of the king immediately and in chief, being the head of his tenants in all the degrees of subinfeudation, whatever he agreed to in matters of government bound all his vassals. For which reason Sir H. Spelman gives it as his opinion, "*that in making laws of the kingdom the common people were not consulted with, but only the barons, and those which held in capite, who were then called concilium regni. And the common people, being, by way of tenure, under one or other of them, did then by him that was their chief lord (as by their tribune or procurator, and as now by the knights of the shire) consent or differ in law-making, and are not therefore named in the title of any ancient laws.*" But, though it may appear that this notion had indeed some foundation in the genius and contexture of the strict feudal system then established in England, it must be observed, that the possessors of allodial estates, in the number of which were all the parochial clergy, having no superior lord to act for them in parliament, could not be thus represented, or virtually bound by the acts of the king's barons, to whom they were not attached by any feudal connexion, and of whom they held nothing. I would likewise

remark,

BOOK II. *remark,* that the knights, citizens, and bur-
 gesses, who are now the representatives of the
 commons of England, are *elected* by those for
 whom they serve; all their power is derived
 to them from their electors; and, upon a dis-
 solution of the parliament, and the calling of
 a new one, those electors are again at liberty
 to make a new choice: whereas the represen-
 tatives, which Sir H. Spelman has supposed in
 his hypothesis, were neither *elected*, nor liable
 to be *changed*, at any period of time, by those
 they represented; their right to sit in parlia-
 ment not arising from any trust conferred by
 the people, but wholly from their tenures.
 Indeed it seems improper, and a force on the
 words, to call them *representatives* or *procura-
 tors*. But further, it is certain, that the feu-
 dal superiority was the same under the govern-
 ment of Henry the Third as of William the
 First, and continued so for some ages. If
 therefore the barons, and superior lords of
 great fiefs holden immediately of the crown,
 had, by virtue of the institutions of William
 the First, been supposed to represent their vas-
 sals in parliament; and the notion was then,
 that every feudatory, holding by a mesne
 tenure, was bound by the parliamentary acts
 of his lord; how came that notion to be dis-
 carded in the forty-ninth year of Henry the
 Third, or under the reign of his son, or at
 any time afterwards, while the feudal con-
 stitution remained in this kingdom? A
 baron, who held of the crown, was to
 all

all intents and purposes *the head of his* *vassals*, in the reigns of Edward the First and Edward the Third, as much as in any of the preceding reigns. How happened it then, that the consent of those vassals to the making of laws, or any other act of moment to the publick, was not still included in the vote of their lord? why was it given, against the course of former proceedings, not by *him*, as *their representative*, but by knights of the shires, or by citizens, or by burgessees, chosen by the vassals? Some learned men have asserted, that this change was brought about by the power of the earl of Leicester, in the forty-ninth year of Henry the Third. But we have a record which demonstrates that date to be false. A writ of summons, directed to the sheriffs of Bedfordshire and Buckinghamshire, and requiring two knights to be sent for each of those counties, is extant in the close roll of the thirty-eighth year of Henry the Third. And there is a clause in the great charter of the ninth of the same king, whereby it is declared, that, together with the spiritual and temporal lords, other inferior freeholders, *et omnes de regno*, by which words I understand *the whole commonalty of the realm*, granted to the king the fifteenth part of all their moveable goods, in return for the liberties accorded to them in that charter. Nor can I discover, in the history of those times, any reason sufficient to render it probable, that so great an alteration should ~~then~~ have been made

See the Charter in Dr. Blackstone's Edition.

BOOK II.

made in the constitution of England. But, if it had been made, it must naturally have produced some disputes, which would have been taken notice of by some of the many historians who lived in that age, and who have left very large and particular accounts of less important transactions. The Roman history is full of the dissensions and struggles between the patricians and plebeians. The same contests likewise appear in several other mixed governments, both ancient and modern ; and every advantage, which the aristocratical or the popular powers obtained in those contests, is distinctly marked by historians. But the English history is quite silent as to any disputes between the nobility and the people, on this account, from the earliest times of the Saxon government, down to the reign of Charles the First. Soon after the times of which I write, we find the king and the barons engaged in civil wars, on account of disputes between the royal prerogative and the liberties of the nation, in which the barons were supported by the arms of the commons : but there is not the least trace, in that part of our history, of any dissension between the barons and commons concerning this question. From whence, I think, we may presume, that the right of the commons must have been incontestably established by custom, and interwoven into the original frame of our government. For, that the admission of all the lower orders of freemen, or indeed of any large number, to the great council of the kingdom, and to a par-

a participation of the legislative power, which BOOK II.
they had no right to before, should be so easily brought about, as to pass unobserved by any writer who lived in that age, is hardly conceivable. Even if we suppose (as some have done) that the sitting in parliament, which is now thought so valuable a privilege, was then regarded only *as a trouble and burthen*, the laying that *onerous obligation* on orders of men, who had been before exempt from it, must naturally have met with resistance and opposition on their part. But that it was generally seen in a very different light may be inferred from the act of the fourth of Edward the Third, which is thus worded. “It is *accorded*, that a parliament shall be holden every year once, and more often, if need be.” The presumption is strong, that they to whom the king *accorded* this statute considered the service in parliament *as a privilege*, of which they earnestly desired the frequent enjoyment; otherwise, they would not have petitioned the crown to call them to it so often, and bound the king, by an express law, not to omit or neglect it. And it is highly probable that this law did only confirm ancient usage. For nothing appears in the wording of it, or in the history of the times, to induce one to believe, that it made any change in the English constitution. We know indeed that some boroughs, which, from their poverty, were unable to bear the expence of sending members to parliament, declined the use of that privilege:

BOOK II.

lege: but no argument can be drawn, from these particular instances, to the general sense of the commons, in counties, cities, or other more wealthy boroughs. As for the nobility, whose power was never higher than in the reign of Henry the Third, it seems incredible, that if the whole legislative authority had, before that time, been always placed in them and the king, they should not have opposed the extension of it to so many persons of a lower rank in the state. And, with regard to the earl of Leicester, it was not his interest, while he was acting at the head of the nobles and people, in a very dangerous contest against the crown, to make any innovations offensive or distasteful to either of those bodies. Nor is it probable that any new institution, begun by that earl, should have been confirmed and perpetuated by Edward the First.

V. Rot. Claus.
24 Edw. I.
in dorso.

Among the close rolls of the twenty-fourth year of that king, there is a writ of summons to parliament, in which it is asserted, not as an innovation introduced by the earl of Leicester, but a *maxim grounded on a most equitable law, established by the foresight and wisdom of sacred princes, that what concerned all should be done with the approbation of all; and that dangers to the whole community should be obviated by remedies provided by the whole community.*

Some very eminent writers have supposed, that none but the king's inferior tenants in chief were at first represented by the knights of shires: but there is no sufficient evidence to support

support that opinion. On the contrary, it appears from some of the most ancient writs now remaining, that the knights were sent to represent *the whole community of the county*: and how this expression should signify *the inferior tenants in chief*, exclusively of all the other freeholders, I do not well comprehend.

There is not in any of those writs, nor in the oldest we have for sending up representatives from cities or boroughs, the least intimation that such elections were a novelty then introduced. But some writs are taken notice of by Mr. Tyrrel, a diligent searcher into records on this subject, which set forth a claim of certain *tenants in ancient demesne*, before the fifteenth year of Edward the Second, that they ought not to be charged with wages to knights of the shire; *forasmuch as they and their ancestors, tenants of the same manor, had, from time beyond memory, been always exempted, by custom, from the expences of knights, sent by the community of their country to the parliaments of the king, and of his royal progenitors*. If no wages had been ever paid to knights of the shire till the reign of Henry the Third, it would have been preposterous for these men to tell the grandson of that king, that they had enjoyed a customary privilege of not paying such wages *from time beyond memory*, which is defined by our law-books to be *a time antecedent to the beginning of the reign of King Richard the First*, and must be supposed,

See Tyrrel's
Append. part
II. vol. iii.
p. 60, 61.

BOOK II. when this exemption was claimed, to go much further back.

See the notes to this book, and Madox's Hist. of the Excheq. c. 17.

See Keble's Statutes of Ric. II. Stat. 2. et ann. dom. 1382, c. 4.

With regard to cities and boroughs, there are likewise extant two claims, made in the reigns of Edward the Second and Edward the Third, the proceedings upon which seem decisive of the sense of that age, concerning the antiquity of the customs of citizens and burghesses coming to parliament, and from towns that were held under subjects, not immediately of the crown; I mean the claims of the towns of Saint Albans and Barnstable: to which I will add the testimony of the whole legislature within the same age. By a statute of the fifth year of Richard the Second it is enacted, “that all and singular persons and commonalties, which from henceforth shall have the summons of the parliament, shall come from henceforth to the parliaments in the manner as they are bound to do, *and have been accustomed, within the realm of England, of old times.* And if any person of the same realm, which from henceforth shall have the said summons (be he archbishop, bishop, abbot, prior, duke, earl, baron, banneret, *knight of the shire, citizen of city, burghess of borough,* or other singular person or commonalty), do absent himself, and come not at the said summons (except he may reasonably and honestly excuse him to our lord the king), he shall be amerced and otherwise punished, *according as of old times hath been used to be done within the said realm in the said case.*”

No

No distinction is made in this statute between the antiquity of summons to parliament sent to the greater nobility, and those to citizens, burghesses, and knights of the shires. All are spoken of as having been *accustomed of old times to come thither*; and the ancient penalties for non-attendance are referred to as the rule for punishing those who should absent themselves for the future. It seems very difficult, if not impossible, to reconcile these expressions to the opinion of those, who date the admission of the commons into the parliaments of this realm, so near to the times when this statute was enacted as the reign of Edward the First, or of Henry the Third. But, besides these authorities, drawn from statutes and records, very evident indications of the presence of the people in the national councils, and of their being constituent parts thereof, though indeed in a confused, disorderly manner, are to be found in some ancient histories, and contemporary accounts of transactions in parliament, during the times which I write of, viz. from the death of Edward the Confessor to that of Henry the Second.

Nevertheless it is certain, that in those times, and long afterwards, ordinary business, and even some arduous affairs of the kingdom, were frequently treated of, and determined, by the nobles alone, who met according to ancient custom three times in a year, namely, on the great festivals of Christmas, Easter, and Whitsuntide. It would have been too inconvenient

BOOK II. venient to summon so often, and from the most distant parts of England, all the citizens, burgesſes, and knights of the ſhires; nor could their conſtituents have ſupported the expence of their wages and traveling charges. But the aſſembly of the nobles was convened with more eaſe; and appears to have acted, not only as a council of ſtate, and ſupreme court of judicature, but as being authoriſed, by permiſſion and common conſent, to exerciſe ſome degree of parliamentary power, the limits of which were not accurately defined. The king was always preſent in it, and ſometimes wore his crown, as he does now in full parliament; all the nobility likewise being dreſt in their robes. We are told by ſome ancient writers, that William the Firſt kept his court, and held theſe aſſemblies, at Chriſtmas in Gloceſter, at Eaſter in Wincheſter, and at Whitſuntide in Weſtminſter: but it alſo appears, that he convened them occaſionally in ſome of his other cities. For, intending to celebrate his Chriſtmas at York in the year one thouſand and ſixty-nine, he ordered his crown and other *regalia* to be carried thither from Wincheſter. This change of place was for the eaſier diſpatch of buſineſs in the ſeveral counties, and that all parts of the kingdom might be favoured, in their turns, with the benefit of theſe meetings, wherein our monarchs diſplayed their utmoſt ſtate and magnificence. William of Malmsbury ſays, that, on ſuch occaſions, the above-mentioned prince made very ſplendid feaſts, for the

Chon. Saxon.
Malmsb. et
Huntingdon.
Will. I.

V. Ord.
Vital. I. iv.
ſub ann.
1069.

L. iii. f. 63.

the entertainment of those who came to attend BOOK II.
his council; and summoned thither all his spiritual and temporal nobles, that the ambassadors of foreign nations might admire the pomp of so numerous an assembly, as well as the sumptuousness of the banquets provided for them. The same magnificence in feasting was continued by his successor, but dropt by Henry the First. Stephen revived it, with great lustre, at the beginning of his reign, and would doubtless have persevered in it till the end of his life, if the troubles of his kingdom, and the wretched poverty which they soon brought upon him, had not prevented him from indulging the liberality of his nature. It has been mentioned in the former part of this book, that Henry the Second wore his crown, in meetings of this nature, at Lincoln and Worcester; in the last of which cities he made a solemn vow, that he would wear it no more. But the omission of this ceremony did not alter the custom of summoning the nobility, at the usual seasons of the year, when the king was in England. It frequently happened, that the occasions for calling the commons to parliament fell in with those festivals; and in that case, I presume, the summons being sent to the counties, cities, and boroughs, converted such councils into full and compleat parliaments. Of this we have an instance in the first year of King Stephen, which is particularly considered in one of the notes to this book, among other proofs drawn from history, of

BOOK II.

the presence of the commons in the parliament of this kingdom during the period from the death of Edward the Confessor to that of Henry the Second. There is also reason to believe, that the above-mentioned council, held at Worcester, was a full parliament. But neither the number of representatives, nor the modes of representation, were so absolutely fixed, as not to be liable to occasional variations at the will of the crown. Perhaps the principal magistrates of cities and boroughs may, at some times, have been deputed, by virtue of their offices, to represent those communities. And it seems that, in conformity to the ancient German custom, so far as could be practised when the assemblies of the nation were no longer convened in open plains, none of the inferior orders of freemen, residing in or near the place where the parliament met, were excluded from attending it *in their own persons*, the number of them being only limited by the capacity of the building in which they assembled. Much confusion must have arisen from a liberty of this nature; and it certainly was a great improvement of the English constitution, when the lords were separated from the commons, and none of the latter admitted into the national councils but by a regular and fixed method of representation. Among the freeholders, of whose presence in parliamentary meetings a distinct notice is taken by the historians of the times treated of in this work, we find many of the inferior, secular clergy, an

an order of men who were certainly of too BOOK II.
 great estimation and account in the state not
 to have had a share in the legislature, either
 personally, or by representatives. There are
 not, indeed, any writs of summons now re-
 maining, which require proctors to be sent for
 them to the parliaments of this kingdom be-
 fore the twenty-third year of Edward the First: V. Annal.
 but from the annals of Burton it appears, that Burton,
 the whole body of the clergy were so re- p. 355. sub
 presented in the thirty-ninth of Henry the ann. 1255.
 Third: nor is it remarked as a novelty by See also one
 any of the historians who wrote in that age, of the Notes
 though, being all ecclesiasticks, they probably on this book.
 would have thought it more worthy of obser-
 vation, than any event wherein the laity alone
 were concerned. It may be therefore presumed,
 that not only the attendance of the inferior
 clergy in parliament, which is evidently proved
 by many passages in more ancient historians,
 but this kind of representation of them had
 been customary long before. In later times,
 from a desire of independence on the state, to
 which they were incited more and more by
 the pope, they gradually withdrew themselves
 from any attendance in parliament, either
 personally, or by representation; so that,
 after the reign of Henry the Sixth, they are
 hardly ever mentioned as present there;
 although, in the twenty-first year of Richard V. Rot. Parl.
 the Second, the commons had shewn, in a pe- 21 R. II.
 titition to the king, *how that before those times*
many

BOOK II. *many judgements and ordinances, made in the times of the progenitors of our lord the king in parliament, had been repealed and disannulled because the state of the clergy were not present in parliament at the making of the said judgements and ordinances.* Upon the reformation of religion, in the reign of Edward the Sixth,

See Hody,
Hist. of Con-
vocations, p.
429, 430.

See Append.
to Burnet's
Hist. of the
Reformation,
numb. 18.

an attempt was made in convocation to have the lower house united to the house of commons, according to ancient custom, *sicut ab antiquo fieri consuevit*. It was also proposed to Queen Elizabeth, but rejected. The clergy continued to tax themselves in a separate body till the restoration of Charles the Second; soon after which they were taxed in the same manner and conjointly with the rest of the commons; and have ever since been represented in parliament by the same persons; which has more embodied them with the laity, and prevents the setting up of a church interest distinct from that of the people. It is remarkable, that this very important alteration in the state of this kingdom was made *without any law*, by agreement with the clergy. And thus several others may have happened before, in the methods by which those, to whom our ancient constitution had given a share in the legislative power, exercised that great privilege, during the course of so many centuries, as have passed since the Saxons, or even since the Normans first came into this island. Some orders of men, who had before attended *personally* in
our

our great councils, or parliaments, may, from the increase of their numbers, or from other motives of convenience, have come by *representatives*; and *the mode of representation* may have occasionally *varied*: but all this, I presume, was done, and the whole system of those assemblies was finally settled, without any change in *the principles* of the ancient constitution, and on the foundation of *undisputed, original rights*. The presence of *the people* in the Saxon councils, and their having had a share in the highest acts of legislature and government, even till the entrance of the Normans, seems to be proved very strongly, from the preambles of laws and other proceedings of those councils, and from the words of the best historians who lived near to those times. On this long usage, I conceive, their right was established; and it appears to have been continued under William the Conqueror, with other customs and rights confirmed by him to the nation; and under his successors by like sanctions of ancient liberties granted in repeated royal charters. Accordingly we find, that so long ago as the second year of King Henry the Fifth, the house of commons assert, in their petition to the king, that *it ever hath been their liberty and freedom, that there should no statute or law be made without their assent*; and that they are, and ever have been, *a member of the parliament*: which claim was not disallowed either by the lords or the king.

Upon

BOOK II.

Upon the whole, it seems that the parliaments, during the times which I write of, contained in them *the first elements* of those we have now: but were only a *rough draught*, in which regularity and decorum were absolutely wanting. Nor was that *balance of power*, which makes the perfection of our present constitution, yet fixed in those assemblies. For, the property of the commons were so unequal to that of the nobles, and the feudal obligations of the inferior landholders to the lords they held under, created such a dependance of the former on the latter, that although, in the idea and scheme of the government, a popular power was mixed with the regal and aristocratical, yet, in reality, the scale of the people was not weighty enough to make a proper counterpoise to either of the other. The changes made in the peerage, the relaxation of feudal laws, and the diffusion of wealth among the lower orders of freemen, produced afterwards a great difference in the state of the legislature: but the history of these events belongs not to my subject.

V. Rot. Parl.
2 H. V. p. 2.
n. 22.

All feudal governments were *monarchical*, and could no more subsist without a king, than an army without a general; the royal power being considered as the source of all dignity and command in that system. But neither could monarchy in such a government be sustained without a nobility, nor that nobility without inferior orders of *freeholders*; the feudal

dal notions requiring all these ranks in the community, and connecting them together by reciprocal duties. The degrees of power appropriated to each of these orders were different in different countries, and even in the same countries at different periods. During the age that I write of, the regal power in this kingdom, though limited by a mixture of Aristocracy and Democracy, was very great. The execution of all laws was entrusted to the king, and none could be made, repealed, or altered, without his assent. It was by him that the whole state exerted its energy, either in peace or in war. He treated with foreign powers; he made alliances and confederacies, offensive or defensive; by him peace was concluded, by him war was declared. He was the general of the armies formed by knight-service, or by commutations for that service; nor could any other species of military force exist in the realm, without being subject to his orders, as commander in chief. Appeals were carried to him from all the inferior courts of justice; and in his own court he exercised a sovereign judicature, without appeal. He had many offices to bestow, which created him a great number of dependants and friends: but his chief power arose from the multitude of fiefs, which, by escheat, or by forfeiture, were continually falling into his hands. The influence, our present government may be supposed to derive from the emoluments it confers, is by no means equal to that which the crown must
I have

BOOK II. have obtained, while the feudal law was in vigour, from a prudent conduct in the disposal of these vacant fiefs. A place, or pension, held during the pleasure of the king, or even for life, is a much less valuable gift, than *lands of inheritance*, some of which had great dignities and privileges annexed to them, besides their rents and profits. A court, which had such immense and lasting benefits to confer on those it favoured, must have had many suitors, among all ranks of men, perpetually solicitous to gain its good-will, and, by consequence, ready to obey its orders. Nor, when baronies, or other fiefs, had been granted by the king, did the dependance upon his favour, with regard to those possessions, entirely cease. For the right of wardship over the heirs, in case of minorities, made all the great families afraid of offending the sovereign, who might happen soon to have the custody and education of their children committed to him by law, as well as the care of their estates, during the time of such custody. And certainly there could not be a more irresistible bribe to avarice, ambition, or love, than the hand of a rich, a noble, or a beautiful heiress, which the king, as feudal lord, was often able to grant. This power alone, as it affected the interests and passions of men in the highest degree, was greater than any the crown possesses now, and very dangerous to the public.

See Baronia,
l. i. p. 32.

Another feudal prerogative was the altering of the service by which lands were held; of which

which Mr. Madox gives an instance under BOOK II.
 King John, who ordered an estate, which under his brother, King Richard, had been held by knight-service, to be held by the service of the *falconrie*, a species of serjeanty.

The wealth of the crown, in the times of which I write, was a great support of its power.

The ancient demesne, or landestate of the crown, as recorded in Domesday-book by William the First, consisted of fourteen hundred and twenty-two manors in different counties, besides some scattered lands and farms not comprehended therein, and quit-rents paid out of several other manors. Much of this ancient patrimony of the kings of England was alienated in the reign of King Stephen; but the resumption made by Henry the Second (of which an account has been given in the former part of this book) recovered all those alienations, except only the lands which had been granted to the church, and which probably did not exceed what must be added to the number in Domesday-book, viz. the estates of the crown in the four northern counties, and in some parts of Wales, which were subdued after the death of the Conqueror, who caused that survey to be made. It is therefore evident, that a vast share of the lands of England was possessed by Henry the Second, which was a constant support to the royal dignity, independent of all taxes or impositions on his subjects, and which was considered as a sacred and inalienable patrimony, transmitted
 to

See Brady
 Hist. W. I.
 p. 210.
 Davenant on
 Resumptions
 p. 105.

BOOK II.

to him from his ancestors, the ancient kings of England; for it appears by Domesday-book, that all the demesne lands, assigned therein to the crown, belonged to it in the reign of Edward the Confessor. But it will be necessary, in treating of the royal revenue, to give a particular account of that famous record, which is called by Sir H. Spelman, *if not the most ancient, yet without controversy the most venerable monument of Great Britain*. It consists of two volumes, which together contain a description of all the lands in England, except the four northern counties, made by order of William the First, with the advice of his parliament, in the year one thousand and eighty-six. But it seems not to have been finished till the following year, which was the last of that king.

V. L. Eliensis
MSS. Cotton,
Lib. Tiberius
A. vi.

For the execution of this great survey, some of his barons were sent commissioners into every shire, and juries summoned in each hundred, out of all orders of freemen, from barons down to the lowest farmers, who were sworn to inform the commissioners what was the name of each manor, who had held it in the time of Edward the Confessor, and who held it then; how many hides, how much wood, how much pasture, how much meadow-land, it contained; how many ploughs were in the demesne part of it, and how many in the tenanted part; how many mills, how many fish-ponds, or fisheries, belonged to it; what had been added to it or taken away from it; what was the value of the whole together in the time of King Edward, what when granted by William, what
at

at the time of this survey; and whether it BOOK II.
might be improved, or advanced in its value.

They were likewise to mention all the tenants of every degree, and how much each of them had held, or did hold at that time; and what was the number of the slaves. Nay, they were even to return a particular account of the live stock on each manor. These inquiries, or verdicts, were first methodised in the county, and afterwards sent up into the king's Exchequer. The lesser Domesday-book contains the originals so returned from the three counties of Essex, Norfolk, and Suffolk. In these the live stock is noted. The greater book was compiled, by the officers of the Exchequer, from the other returns, with more brevity, and a total omission of this article, which (as appears by the expressions of contemporary historians) gave much offence to the people: probably because they apprehended, that the design of the king, in requiring such an account, was to make it a foundation for some new imposition. And this apprehension appears to have extended itself to the whole survey at that time. But, whatever jealousy it may have raised, it certainly was a work of great benefit to the publick; the knowledge it gave to the government of the state of the kingdom being a most necessary groundwork for many improvements, with relation to agriculture, trade, and the increase of the people, in different parts of the country; as well as a rule to proceed by in the levying of taxes. It was also of no small utility

BOOK II. utility for the ascertaining of property, and for the speedy decision or prevention of law-suits. In this light it is considered by the author of the dialogue *de Scaccario*, who speaks of it as the completion of good policy and royal care for the advantage of his realm in William the Conqueror; and says, it was done to the intent, that every man should be satisfied with his own right, and not usurp with impunity what belonged to another. He likewise adds, that it was called Domesday-book by the English, because a sentence, arising from the evidence there contained, could no more be appealed from, or eluded, than the final doom at the day of judgement. From this authority given to it, one should suppose that the verdicts, on which the register had been grounded, were found in general to be faithful; notwithstanding the confession made by Ingulphus, abbot of Croyland, that with respect to his abbey the return was partial and false. For it does not appear that the design imputed to Ralph Flambard, as minister to William Rufus, of making another and more rigorous inquisition, was ever put in execution, or that any amendments were made in either of the books. I must observe, that many lands are declared in those records to be of much greater value when this survey was made, than in the time of Edward the Confessor, and capable of being still very considerably improved by more cultivation. But from other evidence it appears, that the four northern counties were then, for the most

V. Hist. Ingulph. edit. Gale, p. 79.

most part, in a waste and desolate condition; which, I presume, was one reason of their not being surveyed together with the others. It is surprising, that this defect was not afterwards supplied by a similar inquisition. The above-mentioned author of the dialogue *de Scaccario* L. i. c. 7. tells us, that, from the Norman conquest till the reign of Henry the First, the rents due to the king were accustomed to be paid in provisions and necessaries for his household; but that prince, about the middle or towards the end of his reign, being moved with the complaints which were frequently brought to him, from those who tilled his demesne lands, of the great oppressions they suffered, by being obliged to bring victuals and other provisions, for the use of his household, to different parts of the kingdom, from their own dwellings, did, with the advice of his parliament, send commissioners over England, to take an estimate of the value of what they thus paid in kind; and these, reducing it into money, appointed the sheriff of each county to put together all the sums arising from the said lands contained therein, and account with the Exchequer for the whole collection. Yet it is certain, notwithstanding the authority of this treatise, which is kept among our records, that, before the reign of Henry the First, the rents of the crown, from those who occupied its lands in ancient demesne, were often paid in money. But the converting *all* such rents, in the manner above-described, into pecuniary payments, is a me-

BOOK II. morable act of that reign. If a moderate composition was taken (as there is reason to believe), this alteration was a great relief to the tenants. But though the revenue of the crown was lessened thereby in real value, the money brought into the treasury, which might be applied to any services, of war or other exigencies, was in many respects more commodious and more desirable for the king. And the frequent occasion Henry had for supplies of this kind, by reason of the quarrels he was engaged in for the defence of his territories or allies on the continent, must naturally have inclined him to prefer this mode of payment to a greater profit from the methods before in use.

See Madox's
Hist. of the
Exchequer,
c. 10. p. 203,
204, 205.

From the account before given of the number of manors belonging to the crown, as its ancient inheritance, it appears that the king, in the times of which I write, was beyond comparison the greatest landholder in England: but, besides his demesnes, he had frequently in his possession, by escheats, seizures, or forfeitures, the lands of many of his vassals. How considerable a revenue arose from hence to the crown may be judged from these instances. In the seventeenth year of King Henry the Second, there were in his hands seven baronies, of which four belonged to earldoms; and in the thirty-first of the same king eight baronies, belonging likewise to earldoms, the lands annexed to the office of constable of England, with twelve other baronies, or knights-
fees

fees of great value. Many lesser offices and fees of different kinds often fell to the crown by devolution or forfeiture, all which produced together a very ample income. The greater escheats were let at farm, or committed to the custody of persons appointed by the king, to whom they accounted for the profits. Mr. Madox says (though with some doubt), that, about the latter end of king Henry the Second's reign, the officers of the Exchequer began to form an escheatry. It appears that, in this reign, the vacant bishopricks, and other prelaties, which were of royal foundation, escheated to the crown; and, till a new election was made of a bishop or abbot, the king enjoyed the revenues and profits of those sees, as he did of other escheats. Peter of Blois, in his continuation of Ingulphus, affirms, that William Rufus, seduced by the counsels of Ralph Flambard, his principal minister, was the first king of England who began the evil practice of retaining to his own benefit these sacred revenues, which his father, and all his Anglo-Saxon predecessors, had religiously and strictly refunded to the next succeeding prelates. This testimony is confirmed by Ordericus Vitalis, who says that, before the entrance of the Normans, the custom of England was, that the bishop of the diocese took care of the revenues of vacant abbies therein, and the archbishop, in like manner, of vacant bishopricks in his province. Both these writers exclaim against the alteration made by William Rufus, as a sacrilegious invasion of the goods

P. III. ad
ann. 1100.

P. 678, 679,
ad ann. 1089.

BOOK II. of the church. Yet it was certainly justifiable by the feudal principles then established by law in England. For churchmen who held their temporalities of the crown, as baronial estates, having no heirs who could claim by descent from them, their fiefs at their decease reverted to the crown; as all other baronies did upon failure of heirs, and for the same feudal reasons. Nor was the king less entitled, as immediate lord of such fiefs, to the revenues and profits of these lands, than of the others so escheated. But the keeping bishopricks and abbies void beyond a reasonable time, for the sake of retaining such profits, was undoubtedly blameable. Peter of Blois says, that William Rufus, under the colour of seeking a fit pastor with long deliberation, kept all dignities in the church a great while vacant, and sold them at last to the best bidder, except in the single promotion of Anselm to Canterbury, which he made in a fit of sickness. He also tells us, that this monarch had in his hands at his death the archbishoprick of Canterbury, four bishopricks, and eleven abbies, which he had let out to farmers. Henry the First in his charter promised, *that he would neither sell nor let out to farm the holy church of God; nor, upon the death of an archbishop, bishop, or abbot, would he receive any thing from the domain of the church, or from the tenants thereof, till the successor should enter upon it.* Yet there is great reason to believe, that before the end of his reign the feudal notions prevailed to the abolition of this law, except with regard to the simony, by some statute

now

See Giannone Hist. de Napol. l. x. c. 12.

V. Petrum Blefens. sup. p. 111. ad ann. 1100.

now lost. It appears by the great roll, which is called the fifth of King Stephen, but which evidently belongs to the latter years of his predecessor (as Mr. Madox has proved), that the revenues of these dignities were let out to farm, during the time of a vacancy, by Henry the First, as they had been by William Rufus. Stephen indeed, by his second charter, promised to put all vacant sees, with the possessions belonging to them, into the hands of the clergy, or persons belonging to the church, till the vacancy was supplied; but he paid no regard to this promise; and though Henry the Second confirmed his grandfather's charter, he did not act in this instance conformable to it, but asserted his right both to the custody and profits of the sees, which were held of his crown, by one of the constitutions of Clarendon: I say asserted his right, because those statutes were only made in affirmance of the law and customs of the kingdom, as they had been established in the time of his grandfather, King Henry the First. Nor do we find by any letters, or other evidence of those days, that the repugnancy of this claim to the charter of that prince was ever objected by Becket, or any of his adherents, who would hardly have failed to remark it, and avail themselves of it, against the proceedings at Clarendon, if they had not known that a sufficient and undeniable answer could be made to the charge. It must be likewise observed, that the crown was left in possession of these escheats, by the great charter of King John, and by those of his son. It

BOOK II.

may therefore well be presumed, that this part of the charter of king Henry the First had been abrogated by some statute enacted in his reign, which Henry the Second, notwithstanding the general confirmation he had given to that charter, renewed and enforced, with the consent of his parliament, by the constitutions of Clarendon, which will be particularly treated of in the following book. Of what value the escheats of spiritual baronies were to the crown, in those days, may be judged from the number which, it appears by the rolls, was in the hands, of this king, in the sixteenth, nineteenth, and thirty-first years of his reign: namely, in the sixteenth, one archbishoprick, five bishopricks, and three abbies; in the nineteenth, one archbishoprick, five bishopricks, and six abbies; and in the thirty-first, one archbishoprick, six bishopricks, and seven abbies. It appears that the bishoprick of Lincoln was kept vacant for eighteen years together: the reason of which I shall have occasion to mention hereafter. But I would observe here, that as it was scandalous, and detrimental to religion, to let the spiritual baronies remain long unsupplied; so it was likewise against the policy of the state, not to enfeoff other barons in the temporal baronies, escheated or forfeited to the crown. For, though the tenants of such baronies continued to pay the same service to the king as they had done to the baron, yet the baronial service itself was lost, till a new feoffment was made; and in the performance of that service the

See Madox's
Hist. of the
Exchequer,
c. 10. p. 209
to 212.

the whole state had an interest, as well as the king. The same may be said, in an inferior degree, of forfeited or escheated knights-fees. And therefore when writers say, that the lands of the crown were inalienable, it must be understood only of those *in ancient demesne*, not of these incidental or casual possessions. Mr. Madox takes notice, that when prelacies were vacant, and in the hands of the king, he used to have, as immediate lord, the reliefs, wardships, &c. of the military tenants holding of such prelacies, together with other profits arising from the estates. And he was likewise entitled, during vacancies, to the custody of prelacies founded by private lords, in case he had the heirs of those lords in wardship. The famous statute of provisors, made in the twenty-fifth year of King Edward the Third, declares, that not only the king, but earls, barons, and other nobles, *comme seigneurs et advoües*, as lords and patrons, ought to have the *custody* of the prelacies founded by themselves or their ancestors, as well as the *presentation* and *collation*. The crown had therefore, in the times of Henry the Second, a double title to such custody, namely *the feudal right* arising from the vacant see being regarded as the escheat of a barony, and *the right of patronage* which arose from the episcopal sees and many of the principal abbies having been originally parts of the demesne of the crown, and *of royal foundation*. This last was by many ages anterior to the other; nor was it ever

BOOK II.

Hist. of the Exchequer, c. 10. p. 207.

Ibidem, p. 208.

questioned in this country, till the see of Rome had encroached on all the rights of our monarchy in ecclesiastical matters. I may add, that, from the interest the whole community had in maintaining the prelacy of the kingdom, it seems to have been an inherent prerogative of the king, to take care of the temporalities of episcopal sees, upon the decease of the bishops, till proper successors were appointed. But the enjoyment of the profits of them was no part of that ancient prerogative; the claim to this being entirely derived from feudal notions, and by many of our princes much abused.

Hist. of the
Exchequer,
c. 10. p. 221.
222, 223.

Great profit, as well as power, arose to the crown from the wardship and marriage of its vassals. Some instances of this are cited by Mr. Madox, from the rolls. In the twenty-second year of King Henry the Second, Thomas de Colvill gave that prince one hundred marks, to have the custody of the children of Roger Torpel and their land, until they came to their full age. In the twenty-eighth of that reign, Odo de Dammartin gave five hundred marks for the custody of the son and land of Hugh the king's butler; and in the twenty-ninth, Celestia, late wife to Richard Fitz-Colbern, gave forty shillings, that she might have her children in wardship, with their land; and that she might not be married except to her own good liking. It is probable she gave so small a sum, because the estate was not a great one. But the highest payments of this nature which

I meet

I meet with in the rolls, till after the thirty-first year of Henry the Third, were made to that king, by John earl of Lincoln, and by Simon de Montfort; the former of these having given three thousand marks, to have the marriage of Richard de Clare, for the benefit of Matilda, his eldest daughter; and the latter, ten thousand, to have the custody of the lands and heir of Gilbert de Unfraville, until the heir's full age, with the heir's marriage, and with advowsons of churches, knights-fees, and other pertinencies and escheats. Ten thousand marks containing then as much silver in weight as twenty thousand pounds now, and the value of silver in those days being unquestionably more than five times the present value, this sum was equivalent to a payment of above a hundred thousand pounds made to the Exchequer at this time. The length of the custody may perhaps have added to the price; but the estate must have been a vast one to answer such an advance: and I mention it as a proof of the great opulence of our nobles in the age I write of, as well as to shew how large a revenue might arise to the crown from casualties of this sort.

In treating of the sheriffs or viscounts, it has already been mentioned, that it was usual for our kings, at this time, to commit the several counties of England to the custody of those officers, or let them out in farm to them or other persons. The committee or farmer accounted to the Exchequer for the profits; which

BOOK II. which made a great branch of the annual revenue. For instance, in the reign of Henry the Second, Wimar, one of his chaplains, who had farmed of him the two counties of Norfolk and Suffolk, paid, on that account, into the treasury, or by charges allowed to him, above five hundred and forty pounds, equivalent to a payment of eight thousand one hundred pounds in these days. The cities, towns, burghs, and villages, which were in the hands of the king, either as parts of his demesne, or by escheats and forfeitures, were also commonly let to farm, and answered for to the crown, in the times of which I write, either by the sheriff, as included in the body of the county wherein they lay, or superadded to it; or by the inhabitants thereof, either in their own names, or in that of their *præpositus*, or reeve. What this revenue might amount to annually may be judged from the payment made in Henry the Second's time by Robert Fits-Sawin for the farm of the borough of Northampton, viz. one hundred pounds. The same farm in the next reign was raised to one hundred and twenty pounds, being then committed to two persons, who are styled in the Exchequer roll *præpositi* of that town. Some profits arose from the farms, or yearly payments, made to the crown, by guilds of tradesmen, in several towns of England. For example, in the eleventh year of King Henry the Second, the bakers of London paid six pounds for the farm of their guild, and the same sum in the fifteenth

Madox's Hist.
of the Ex-
chequer, c.
10. p. 225.

Ibidem, p.
226, et seq.

Ibid. p. 227.
et seq.

Ibid. p. 231.
et seq.

teenth and twenty-fourth. Of the like pay-
ments made by weavers, in many cities and
towns, notice has been taken in what was said
of the woollen manufacture during the reign
of this king. BOOK II.

Of customs, or duties on merchandises, imported or exported, I find in the rolls but little evidence during the times which I write of. But, in the nineteenth year of Henry the Second, it appears that Osbert de Brai, farmer of Windfor, accounted for four pounds six shillings and six pence, arising by the customs of ships or barges passing along the Thames. And, in the eighth year of Richard the First, the chamberlain of London accounted for four hundred and twenty-nine pounds arising in two years from the fines and dismes paid by merchants for tin and other merchandises in the port of London, and ninety-six pounds and half a mark paid in fines by other merchants, for leave to import woad and sell it in England. Another chamberlain accounted, in the tenth year of that king, for several fines paid by merchants, for leave to export wool and hides. Whether these, or another imposition called *prisage*, which appears to have been paid to him, had been also paid to his father, I find no certain proof. *Prisage* was a liberty of taking from every ship, that held twenty tuns of wine, two tuns, one before and one behind the mast, at the rate of twenty shillings each; so that the king had a pre-emption in a tenth at his own price.

See Maxon's
Hist. of the
Excheq. c. 18,
p. 531, 532.
Mag. Rot.
8 R. I. B.

See Hist. of
the Excheq.
c. 18. p. 525,
526.

See Gilbert's
treatise on the
Excheq. c.
15. p. 205.

Mention

BOOK II.

Mention has been made of the aids, which, in virtue of the feudal law, were due to the king from his vassals, and from inferior lords to theirs, during the times of which I write. As they made incidentally a large addition to the royal revenue, it will be necessary to say something more of them here. The aid to King Henry the Second, for marrying his eldest daughter to the duke of Saxony and Bavaria, was collected by an imposition of one mark on each fee holden immediately of the crown, or that was in the hands of the king by escheat or wardship. It was also paid by the towns and lands which he held in demesne. According to Henry of Huntingdon and Roger Hoveden (whom I quote on this point, because no record of it is extant in the Exchequer), King Henry the First, when his daughter was married to the emperor, levied this aid by a charge of three shillings a hide on all the lands of England. But these must be understood to be lands that were holden of the crown.

See Hist. of the Excheq. c. 15. p. 400, 401, 402, 403.

Mr. Madox says, in his History of the Exchequer, that, for the levying of the aid to marry the eldest daughter of King Henry the Second, the barons and tenants in chief were commanded to certify to that prince, what fees they had, how many of the old feoffment, and how many of the new, and of whom they were holden: whereupon many of the barons, and tenants in chief who had large seigneuries, made certificates of their fees, which were called *Cartæ Baronum*, and were ordered to be

be laid up and preserved in the Exchequer. BOOK II.
 The originals of these, except one from the bishop of Chichester, are now lost. But they are entered, together with the names of some who sent no certificates, in the Red Book of the Exchequer, compiled by Alexander de Swereford in the reign of Henry the Third. It is observed by Mr. Madox, that the bishop of Durham was charged to this aid with seventy knights-fees, whereof he acknowledged but ten; and it likewise appears by the rolls, that the archbishop of York disallowed twenty-three and a half, out of forty-three and a half wherewith he was charged. The number of knights-fees that belonged to the honor of Richmond could not be discovered. The above-mentioned author accounts for these uncertainties in this manner. He says, "that when the summons *ad habendum servitium* had been issued, several of the barons and knights would appear before the constable and marshal of the king's host, and would proffer one half, a third, or may be a smaller part, of their due service. The constable and marshal, for want of better information, oftentimes admitted these unfair proffers, being, probably, in haste to complete their army, and march against the enemy." But I would observe, that the certificates, called *Cartæ Baronum*, must, in the reign of this king, have remedied an abuse so prejudicial to the crown; as, doubtless, enquiry was made, by the barons of the Exchequer, into the reasons assigned for the difference

Baronia.
 Book I. p. 122.
 Hist. of the
 Excheq. c. 15.
 p. 404.

Baron. book I.
 c. 6. p. 115.

BOOK II. difference in the numbers of the fees allowed or disallowed by the parties concerned. And Mr. Carte has clearly proved, that this inquisition was begun before the marriage of the daughter of Henry the Second to the duke of Saxony and Bavaria. Indeed this monarchi was too careful both of the revenues of his crown, and of the military strength of his kingdom, to permit such a fraud to continue; and the subsequent increase of it was owing to the negligence and ill government of the three succeeding kings, who, by departing from his principles and methods of policy, weakened and almost subverted the whole state of the realm. The aid to Henry the Third, for marrying his eldest daughter, was twenty shillings per fee, instead of a mark, which it has been shewn was the Affessment under Henry the Second. And it appears by a record, that forty shillings were granted out of every knight's-fee to Edward the First, on a like occasion, by common assent of the barons and other nobles of England; yet with a proviso, that this grant should not turn to their prejudice, but so that, for the future, an aid to be granted in the like case might be increased or lessened, as they, at the time, should think meet. I find no account of what was taken by Henry the Second for another feudal due, viz. on the making his eldest son a knight. But Mr. Madox has shewn, from the records of the Exchequer, that forty shillings were granted to King Henry the Third from every knight's-fee

See Carte's
Hist. vol. i.
p. 574.
Diceto Col-
lec. 536.
M. Paris. sub
ann. 1163.

See Hist. of
the Excheq.
c. 15. p. 412.

18 Edw. I.
Rot. 14.
Hist. of the
Excheq. c. 15.
p. 416.

See Hist. of
the Excheq.
c. 15. p. 414.
415.

fee on that occasion. It must be remarked, BOOK II.
 that neither of these aids was demandable from lands holden in frank almoigne or foccage. There were other aids paid to the crown, of a different kind from these. For instance, in Ibidem, c. 17.
 the fourth year of King Henry the Second, a P. 481, 482.
donum was paid for counties, cities, towns, or burghs, and likewise by the barons and knights for their respective fees, and perhaps for other lands. This produced a great sum; for the city of London alone paid to it one thousand and forty-three pounds. The county of Lincoln paid two hundred, the county of Somerset one hundred, the county of Essex two hundred marks of silver, and the county of Kent four-score pounds. The bishop of Bath paid five hundred marks, the abbot of St. Albans one hundred. It would be tedious to mention all; but I observe that there is a great inequality in the payments; which probably arose from these *dona* being considered as benevolences, and therefore not levied according to any settled rate, but to the will of the giver. Several Ibidem, c. 15.
 others were paid during the reign of this king. P. 419, 420.
 Mr. Madox says, in his history of the Exchequer, that, in the times I write of, the word *donum* was used with great latitude, signifying in general, according as it was applied, either aid, scutage, or tallage. But I believe that it never signified scutage in the sense of a commutation for military service, but only as being paid by the military tenants and out of knights-fees. Of that commutation a great deal has
Ibid. p. 480.
 been

BOOK II. been said before in this history, and in the notes on this book. I shall only add here, that this part of the revenue could not be levied for any civil use, but was appropriated to those services of a military nature, for which the feudatories who paid it were permitted to commute. But the *dona* arising from knights-fees do not appear to have been appropriated to military services, or to have been rights, or necessary incidents, of feudal tenure. Henry the Second had no war in the fourth year of his reign, when the above-mentioned *donum* was paid to him by his barons and knights for their fees. And I can hardly doubt that, in his time, such aids were granted by parliament.

See Hist. of
the Excheq.
p. 482.

As for tallage, it appears that it was payable to the king for his manors in demesne. Those that were in his hands, as escheats and wardships, were likewise talliated by him, and great sums were raised from them, as well as from the former. But it is observable, that the payments made by cities, towns, or burghs, when the demesne lands paid tallage, were frequently entered on the rolls, *de dono*. Whether this imported any distinction in the nature of the payment, I cannot determine. In other rolls the word *assisa*, which signifies an assessment, is made use of, and in some *tallagium*. Lands holden in *frank almoigne*, or holden by *knight-service*, were exempt from tallage. On this privilege of the latter it will be necessary to make some observations. That it was acknowledged to belong to

Ibid. p. 502.

Ibid. p. 492.

Ibid. c. 17.
p. 480 to
487.

Ibid. p. 512.

to them in the reigns of King John and his BOOK II.
 successor appear undeniably, from the records ibid. p. 513.
 of those reigns, which Mr. Madox has cited on this subject. For example, it is declared,
 in the roll of the first of King John, that the
 town of Wicomb was charged with thirty
 pounds and eight pence for tallage; but the
 grand justiciary and the barons of the Exche-
 quer determined, that this manor ought not
 to be talliated, because Alan Basset did knight-
 service for it; as appeared by his charter.
 And there is other evidence as conclusive for
 a like admission of this privilege to those who
 held by the same tenure under King Henry the
 Third. But I must observe, that by two laws
 of William the Conqueror, which have been
 mentioned before, and which are recited in
 the Appendix to the first volume of this his-
 tory, the same exemption is granted to *all the*
freemen of the kingdom. And both these laws
 seem to refer to a preceding statute, now lost,
 by which the feudal policy of the Normans
 had been established in England. Never-
 theless, in the charter of King Henry the
 First, *the military tenants alone* appear to be
 exempted from such impositions, and the ex-
 emption is granted only *to the lands they hold*
in demesne. Whether this difference arose
 from any other statute, made by William the
 First after the two above-mentioned, or from
 a narrow and unfavourable construction thereof,
 by a subsequent usage, I cannot say. But, in
 the rolls of the 40th year of Henry the Third,

Vid. Leges
 Gul. I. 55.
 58. in Ap-
 pend. l. i. vol.
 i. num. II.

See Appen-
 dix, ut supra,
 numb. IV.

BOOK II. I find two instances of a right of exemption

See Hist. of
the Excheq.
c. 17. p. 513.
Notes d. e.
Robert de
Holt, Rich.
de Wygeden.

from tallage allowed to persons, who do not appear to have held by any military tenure; the records saying only, that one of them held *in capite*, and that the other was enfeoffed of a freehold (*libere feoffatus*). Mr. Madox indeed translates these words *enfeoffed in chivalry*, but by what authority I do not see; since it is certain that there were vassals, who were *libere feoffati*, and yet did not hold in chivalry.

Ibid. p. 491. On the other hand, a record is cited by the same author, which shews that, *after great disputes*, the mayor and citizens of London, in the thirty-first year of King Henry the Third, acknowledged that they were talliable, and gave the king three thousand marks, which he had demanded of them, in consequence of a decree of his council at Merton, that he should talliate his demesnes, to answer the great expences he had been at in foreign parts. It does not appear that this council was a full parliament. But the record says, that they offered in it to give two thousand marks *by way of aid*, and declared positively, *they could and would give no more*. But afterwards, in a council holden at Westminster, the only dispute was, whether the sum demanded by the king should be given as an *aid*, or as *tallage*: which was decided by the rolls of the Exchequer and the Chancery, from whence it was proved, that they had before been talliated; but the evidence went no higher than the sixteenth of King John. I am apt to believe, that till that
time

time they had been exempt from tallage; but BOOK II.
 had paid aids and free gifts, *auxilia* and *dona*.
 However this may have been, it is declared
 most explicitly, by King Edward the First,
 in his *confirmations of the charters*, that the
 aids, free-gifts, and other impositions irregu-
 larly taken or levied by him or his ministers
 before that time, for his wars or other neces-
 sities, *should not be drawn into precedent because*
they might be found recorded in the rolls: and
 he therein grants to the nobility and common-
 alty of the realm, that, for the future, he
 would not, for any necessity whatsoever, take
 any such aids or impositions, *without the com-*
mon assent of the whole kingdom, and to the
common benefit thereof; with a reserve of the
ancient aids and impositions due by custom.
 What these were, I have shewn before; namely,
 the aids allowed by the great charter, for re-
 deemming the person of the king from capti-
 vity, for marrying his eldest daughter, and for
 knighting his eldest son. As for *danegeld*,
 on what occasions; and in what manner, it
 was levied, has been already set forth. It will
 be sufficient to add here, that in all or most of Ibid. p. 479.
 the accounts thereof, delivered to the Exche-
 quer in the second year of King Henry the
 Second, a large deduction is made under the
 terms *in vasto*, which Madox rightly ascribes
 to the desolation in the country by the civil
 war in the reign of Stephen.

Another very considerable source of wealth
 to the crown arose from fines, or *oblata* (that

BOOK II.

See Hist. of
Exchequer,
c. 11. p. 273,
274.

is, voluntary proffers of money made to the king), and amercements for offences. Manifold fines were paid for grants and confirmations of liberties and franchises. For example, in the reign of King Henry the Second, the burgesſes of Bedford fined, in forty marks, to have the ſame liberties as the burgesſes of Oxford. The burgesſes of Shrewſbury fined in two marks of gold, to have their town at farm. The men of Preſton gave a hundred marks of ſilver, to have the ſame liberties as the men of Newcaſtle: the burgesſes of Cambridge, three hundred and one of gold, to have their town at farm, and be exempt from the ſheriff of the county's intermeddling. Robert, the ſon of Buſtard, fined in ten marks of ſilver, for a confirmation of his privileges, and that he might not be impleaded, except before the king, or his juſticiary. Theſe few inſtances are ſufficient to ſhew the nature of ſuch payments, and to what the value of them might amount upon a great number collectively. Mention has been made in another place of fines paid to the king, by thoſe who held of him in chief, for licence to marry, or that they might not be compelled to marry againſt their inclination. Some notice has been alſo taken of fines relating to trade or merchandiſe; particularly of thoſe that were paid by gilds of weavers, in many parts of England. Theſe were an incumbrance upon traffick: but not a very grievous one in the times of which I write; for it does not appear that any of the
payments

payments were excessive, till after the decease BOOK II.
of Henry the Second. A great number of persons fined in considerable sums, to obtain the favour of the king, or to induce him to remit his anger and displeasure. For example, in the reign of Henry the Second, Gilbert, the son of Fergus, is charged, in one of the rolls, as debtor to that prince, of nine hundred and nineteen pounds, nine shillings, for obtaining his good-will; and William de Chataignes in another, as owing one thousand marks, on account of Henry's remitting his anger against him, and confirming his charters. But the most enormous of these payments, recited by Mr. Madox, in his history of the Exchequer, Hist. of the Exchequer, p. 327. is in Henry the Third's reign, when the citizens of London fined in twenty thousand pounds, more than equivalent in those days to three hundred thousand in these, for obtaining the good-will of that monarch. It would be tedious to enumerate every other species of fines, which continually brought money into the Exchequer, for the aid, the protection, or mediation of the crown, in various cases. The worst of all, and which are a scandalous disgrace to the government in the times of which I treat, were those that interfered with law-proceedings and the justice of the kingdom. Even in the reign of Henry the Second, we have instances of fines being paid to the king from several of his subjects, for stopping or delaying of pleas, trials, and judgements; or for expediting

BOOK II.

expediting and speeding them; or to have seizure or restitution of their lands or chattels; or that they might not be disseised; or to be replevied or bailed; or to be quit of certain crimes, or certain methods of trial (as, for instance, by hot iron); or to have the assistance of the king in recovering their debts. Mr. Madox is of opinion, that the clause in *Magna Carta*, "*Nulli vendemus, nulli negabimus aut differemus rectum vel justiciam*," had a reference to these fines. And he observes, from the records of subsequent reigns, that it seems to have had its effect. I understand those words to have had a higher and more extensive sense, though this practice may have fallen within the purport of them: but, however that may have been, the iniquity of it was certainly carried much further, by the sons and grandsons of Henry the Second, before the charters were established, than during his reign. And he had the example of his grandfather, Henry the First, a just and wise prince, as well as of other feudal governments over all parts of Europe, to plead in defence of these profits so dishonourable to the crown. There were likewise *concurrent fines*, and *counter fines*; the first when both parties, concerned in any matter, fined to obtain the same thing; the last, when their requests or applications to the crown were directly opposite. But, upon considering the records, it appears to me, that although money was paid by each suitor, it was always returned

Ibid. c. 12.

P. 314.

P. 315. 335.

returned to the party that was unsuccessful in the suit. Many fines were paid for permission to hold or quit certain offices. Others are mentioned by Mr. Madox under the title of *miscellaneous*, as not being reducible to any P. 325. class or general head. Of these I do not find any, in the times contained in this history, worth particularising here: but he recites one, under the reign of king John, which is of a singular nature. The wife of Hugh de Neville P. 326. a. fined to that monarch in *two hundred hens*, that she might lie one night with her husband; but, the distressed lady not being able to provide them immediately, her husband was pledge for the payment of one hundred of them, and Thomas de Sandford for the other hundred, within a limited time. It is probable, that either Hugh de Neville, or his consort, was a ward of the crown, and had married without the king's consent. Other instances might be produced from the rolls of the Exchequer in the same reign, that no profits were thought below the acceptance of the king, and that he exercised a kind of ludicrous tyranny in this traffick with his subjects; but these must rather be imputed to the character of the man, than to the law or custom of the times.

We learn from the dialogue *de Scaccario*, L. ii. c. 26. written in Henry the Second's reign, that when a fine of a hundred marks was offered to the king, a mark of gold was at the same time to be paid to the queen, and so in proportion for all above that sum: but whether a y
 S 4 thing

BOOK II.

nothing was due to her, upon the proffer of a fine below that sum, was then matter of doubt. The origin of this demand was, I presume, a supposition, that, as fines were given for some favour requested of the king, or in mitigation of some penalty or burthen laid on the subject, the queen's good offices with him ought to be purchased by the suitor.

Amercements for offences produced vast sums. The subject is too extensive to allow me to enter into particulars; and I shall have occasion, in a subsequent part of this work, to take notice of some records relating to amercements in the History of the Exchequer, when I shall treat more distinctly of the criminal law of England during the times of which I write. It will be sufficient here to say, that only from trespasses in the forests an ample revenue accrued to the king, and much more from the great variety of other misdemeanors, defaults, and trespasses, for which, by the law of those times, amercements were due, or for which composition was made by fines. But before I conclude this account of the royal revenues, a particular view must be given of the state of the Jews in England, from the reign of William the Conqueror to that of Henry the Second inclusively. The religious notions of the times, and laws founded thereupon, forbidding usury to all Christians, and not distinguishing between that and a reasonable interest for money upon loans, without which neither commerce could well be

History of the
Exchequer,
p. 272.

See Coke's
Institut. P. II.
Stat. of Mer-
ton, c. 5.
p. 89.
Glauv. l. vii.
c. 16.

be carried on, nor the sudden exigencies of the government, or of particular persons, be supplied, the Jews were necessary, as money-lenders: and a great number of them were settled in the principal cities and towns of England, under the special protection of the crown: That they had been here several centuries before the entrance of the Normans, though probably not in so 'great' a number, seems to be proved by a canon published by Æcgbricht, archbishop of York, in the year 740, which forbids any Christians to be present at the Jewish feasts. Yet we have little account of them during the Saxon times, or in the reign of William the Conqueror: but the contemporary historians are full of indignation against William Rufus, for favouring them too much: and indeed, if the tales they tell are true, there was great indecency and impiety in his proceedings. We may at least conclude from thence, that he shewed more kindness to the Jews, than the temper of the age would well bear. It appears, by a charter granted to them in the second year of king John, that they had also received charters from Henry the Second and Henry the First. The preamble of it runs thus: " Know that we have granted
 " to all the Jews of England and Normandy,
 " to reside *freely* and *honourably* in our land,
 " and to hold of us every thing *which*
 " *they held of King Henry the grandfather of*
 " *our father*, and all which they now right-
 " fully or reasonably hold, in lands, in fiefs,
 " and

See Hist. of
 the Excheq.
 c. 7. p. 174.

BOOK VII. " and in their pledges, or purchases; and to
 " enjoy all their liberties and customs, as well,
 " as quietly, and as *honourably*, as they enjoyed
 " them in the time of the aforesaid king our
 " grandfather." The following articles of the
 charter contain very considerable privileges,
 which the reader may see in the Appendix to
 this book. Four thousand marks were given
 by all the Jews of England for *this confirma-*
tion of their charters, as it is styled in the re-
 cord of that payment. But this did not pre-
 vent very grievous and tyrannical oppressions
 of them in that and the following reign.
 They seem to have been treated much more
 favourably by the five first kings of the Nor-
 man race. To Henry the Second indeed they
 paid, by way of tallage, a fourth part of their
 chattels, in the thirty-third year of his reign;
 which was a heavy imposition: but it was for
 the recovery of the Holy Land, to which all
 his subjects contributed in an extraordinary
 manner; and one cannot wonder that this
 people should be taxed higher than the rest on
 such an occasion. The former demands upon
 them, in this reign, appear not to have been
 great. Yet by fines and *oblata*, or by amerce-
 ments for trespasses, they were very profitable
 to the crown. In the twenty-third year of
 this king, Jurnet the Jew fined in two thou-
 sand marks, another Jew in three thousand,
 and another in five hundred pounds. We also
 find that, in the thirty-first of the same reign,
 the whole body of the Jews stood charged with
 five

Ibidem, p.
 155. *Oblata*
 2 John. M. 3.

Ibidem, p.
 151. c. 7..

Ibidem, p.
 153, 154.

five thousand five hundred and twenty-five BOOK II.
marks, and half a mark, for the amercement
of the above-mentioned Jurnet; and they were
to have his effects and charters to enable them
to pay it. This man must have been im-
mensely rich: for soon after the discharge of
this amercement, in the fifth year of King Ri-
chard the First, he gave to that monarch a fine
of eighteen hundred marks, for leave to reside
in England with his good-will. In the reign
of Henry the Third, the exactions from the
Jews were prodigious. One single tallage, laid P. 155.
upon them about the twenty-seventh or twenty-
eighth year of that king, amounted to no less
than sixty thousand marks. Putting the value
of silver in those days at only five times above Hist. of the
Excheq. c. 7.
P. 152, 153.
the present (and it should, I believe, be put
higher), this sum will be equivalent to six hun-
dred thousand pound in these times; as every
pound contained the weight of three of ours.
The usury of the Jews must have been enor-
mous, and their profits in traffick very great,
to enable them to bear such imposition with-
out absolute ruin. Indeed (to use the words of
Mr. Madox) “ as they fleeced the subjects of P. 150. c. 7.
“ the realm, so the king fleeced them.” Pro-
bably, in the reign of Henry the Second, when
they were much less harrassed by the govern-
ment, they contented themselves with a lower
interest for the use of their money. There was Hist. of the
Excheq. c. 7.
P. 157.
a particular place appointed for the management
of the revenue arising from this people, called the
Exchequer of the Jews; which was a part or
chamber

chamber of the Great Exchequer. Certain persons were assigned to be curators of this revenue. They were usually styled *custodes* and *justiciarii Judeorum*. Mr. Madox says, "that in the more ancient times there were commonly Christians and Jews appointed to act together in this office. Afterwards they were, for the most part, Christians only." By the *more ancient times* I understand he means those which are treated of in this work. Upon the whole, it seems, that the revenue annually accruing to the crown from all these different branches, exclusive of its demesne, or ancient landed estate, was at least equal to that in value. But from what has been said on the nature of them this observation will occur, that it is a point of good policy, and of great benefit to a kingdom, that whatever is necessary for maintenance of the honour and dignity of the crown should be supplied by a fixed and stated income, instead of arising from a variety of incidental profits, which can hardly ever be taken without some diminution of the majesty of the sovereign, some vexation to the people, some inconvenience or detriment to trade and commerce, or some offence to justice.

Of the manner of paying out, or issuing the king's money, I shall give a few instances from Mr. Madox's History of the Exchequer, which at the same time will exhibit some curious particulars of the way of living in those times, of the magnificence and liberality of our princes, and of the produce and traffick of the country,

country. In the reign of Henry the First, an allowance was made to the several sheriffs of Staffordshire, Northamptonshire, and Leicester-shire, for mead and beer provided by order of the king, for money delivered to his vine-dresser at Rockingham, and for necessaries for the vineyard. In different years of King Henry the Second's reign, allowances were made to the officer who farmed Windsor of that prince, for wine, perry, and cyder; to the farmer of the town of Hampton, for wines, and the carriage of them; which wines were chosen by the king's butler, and sent to several of the king's houses, namely, at Fekenham, Nottingham, Gattinton, Woodstock, Marlborough, Titgrave, Luggershall, and Clarendon; and to the sheriff of Hampshire, for corn, barley, and honey, to make ale with, for the use of the king's son-in-law, the Duke of Saxony. For the helmet and belt of this monarch, and for furbishing and gilding his swords, and for work done upon the points and hilts of them, the sheriffs of London disbursed, in the fifth and eighteenth years of his reign, nineteen pounds and odd money, equivalent in those days to near three hundred pounds in these. They likewise paid twenty pounds and upwards, in the first of these years, for a robe for the use of the queen; and, in the latter, fourscore and eight pounds odd money, for the coronation-ropes of the young king and of his queen; and eight pounds eight shillings, for a riding-dress and three silken cloaks for that prince. Richard,

BOOK II.

Hist. of the
Excheq. c. 10.
from p. 249.
to 257.

BOOK II. *chard*, archdeacon of Poitiers, *custos* of the bishoprick of Winchester, disbursed two hundred pounds to Osbert, clerk of the chamber, and other chamberlains, for the king's use upon his journey back from Ireland, and for the young king's *curady*, or maintenance, for three days before his coronation, and on the coronation-day. For the entertainment of the king of Scotland sixteen days, the sheriff of Yorkshire disbursed a hundred pounds and odd money, in the third year of this reign. Among other articles, for the use of King Henry the Second and his family, mention is made of linen napkins and linen garments; of the skins of mountain-cats, of martins, and ermins; of red, scarlet, and green cloths; of silken garments, silken caps, dalmatiques, and tunick. In one of the rolls there is a charge of ten pounds six shillings, paid to Joseph the king's physician, for spices and electuaries. I find no account of any painting in the palaces of this prince; but, in his grandson's time, the sheriff of Nottinghamshire was ordered to cause the queen's chamber at Nottingham to be painted with the history of Alexander. It seems that the rooms of Henry the Second's palaces were generally hung with cloth. The several sheriffs, and others who farmed the king's revenues in different parts of the realm, were likewise ordered to disburse considerable sums, for provisions and expences relating to war, arms, garrisons, knightships, and the like. But it will be unnecessary to enter into further particulars

culars on this or other issues of the money of the crown. I will only take notice, that the forms and methods of accounting at the Exchequer, established in that age, were so excellently contrived for the preventing of frauds, and for good order and regularity in the publick accounts, that they have continued unaltered even to this day, during the course of above five hundred years. The institution of them is ascribed to William the Conqueror; L. i. c. 4. and the author of the dialogue *de Scaccario* says, he took the plan of them from the Exchequer in Normandy, yet with many differences, and even in points of great importance. The great power and dignity of the court of Exchequer, in those times, is thus set forth by that writer: "The authority of this court is very eminent, as well in respect of the image of the king imprest on his great seal, which is constantly kept in the treasury, as of the persons who sit there, by whose wisdom the whole state of the realm is preserved and maintained in safety. For there resides the king's chief justiciary, who is next to the king in jurisdiction; and all the greatest men of the kingdom, who are of his privy council, have also places there; that whatsoever is decreed or determined in the presence of so august an assembly may remain inviolable. But some sit there by virtue of their offices, and others only by the command of the king." He then tells us, that the latter, who were generally persons of the

BOOK II. the highest rank and most reputation for prudence, either of the court or the clergy, were occasionally called to assist in the decision of nice and doubtful cases. Mr. Madox observes, that, before the end of King Henry the Third's reign, the Exchequer fell in great measure from its ancient grandeur, and from thenceforward continued in a state of declension.

Hist. of the
Exchequer,
c. 20. p. 548.

In describing the civil and political state of England, from the coming-in of the Normans to the reign of Henry the Second, inclusively, it will be necessary to say something more of the condition of cities and boroughs within that period: and first of London—The charters granted to that city by William the Conqueror and Henry the First have already been mentioned in a former part of this work. The reader may see them translated into Latin in the Appendix to this volume, together with another given to it by King Henry the Second. This last is a confirmation of all the liberties and free customs which they had in the time of his grandfather, King Henry the First, with some additional benefits and immunities. It is without a date; but there is reason to place it, as Spelman does, in the first year of Henry the Second. I shall only observe upon it here, that, considering the attachment which the citizens of London had shewn to Stephen, and the manner in which they had driven the empress Matilda from her palace at Westminster, it is one of the strongest proofs, both of the clemency of her son, and of his wise resolution to appease

Vid. etiam
Wilkins Leges,
p. 290.
235. 318.

cease the troubles of his realm by a total obli- BOOK II.
 vion of all past offences, that, instead of
 abridging their liberties, he so graciously con-
 firmed and enlarged them. Of the state of
 this city in his reign we have an account from
 Fitz-Stephen, a contemporary writer, which
 has some particulars that deserve to be taken
 notice of here. According to him, it was then V. Stephan.
in Mus. Brit.
 strongly fortified on all sides, except to the
 river, the tides of which had undermined and
 destroyed the ancient wall that had been
 erected along its banks or strand. On the
 eastern side was the white tower, built by Wil-
 liam the First, which he calls *Arcem palati-*
nam maximam et fortissimam: on the western
 were two other very strong castles (viz. those
 of Baynard and Mountfitchet), besides the walls,
 which were high and thick, and on the nor-
 thern side, at proper distances, strengthened
 with turrets. On this description I would
 observe, that in Henry the Second's reign, it
 was not necessary to repair the ruined wall of
 the city along the river, as there was no dan-
 ger of an enemy's being able to sail up it, af-
 ter the tower and bridge were built. The same
 historian speaks of seven double gates, which
 are supposed to have been Aldgate, Bishop-
 gate, Cripplegate, Aldersgate, Newgate, Lud-
 gate, and the Postern near the Tower. He See Mait-
land's Hist.
of London,
p. 15.
 also describes the royal palace of Westminster,
 rising high and stretching wide over the banks
 of the river, at two miles distant from London,

BOOK II.

V. Stephan.
ut *suprà*.

with a continued suburb all the way, and calls it *an incomparable building*, defended by an outward wall and turrets. When this palace was built, is uncertain; but the hall was added by William Rufus. Along the whole extent of this suburb were gardens of the citizens. To the north were open fields; and beyond these was a large forest, of which Enfield Chase is but a small remainder. Among the game contained therein, Fitz-Stephen mentions wild boars. In reckoning up all the glories of the city, he says, that no other in the world sent out its wealth and merchandize to a greater distance; and among the imports brought thither, by foreign merchants trading to it, he mentions gold, spices, and frankincense, from Arabia; precious stones from the Nile; purple vests from the East-Indies; oil of palms from Bagdat, or Babylon; furs and ermines from Norway and Russia; arms from Scythia, or Tartary; and wines from France. He adds, that it was famous for the chastity of its matrons, and that its citizens were distinguished above all others in England by the superior elegance of their manners, their dress, and their tables. But in the account he gives of the number of fighting men, who marched out of the city, upon a muster made by King Stephen, he exaggerates most enormously; for he makes them sixty thousand foot, and twenty thousand horsemen; whereas Peter of Blois, at that time archdeacon of London, in a letter to the pope, reckons all the inhabitants of that city

Vid. P. Bles.
epist. 151. ad
Innocent. III.
papam.

city at no more than *forty thousand**. If there BOOK II.
 was any muster, it must have contained the
 militias of Middlesex, Kent, and other ad-
 jacent counties, which may have been drawn
 together by that monarch, and united to the
 militia of London, on some occasion, during
 the course of the civil war between him and
 the empress. But this historian is supported by
 the archdeacon's authority, in affirming, that
 there were in the city and suburbs a hundred
 and twenty-six churches, besides thirteen that
 belonged to convents. He speaks of three
 schools, or rather colleges, appertaining to
 London, which, he says, were of *ancient dig-
 nity*, and wherein, by particular privilege, was
 taught, not only grammar, but poetry, rhe-
 torick, and logick; besides which, many other
 schools were occasionally opened by persons of
 note in philosophy, who were encouraged to
 teach and read lectures. The description given
 by this author of the military sports of the
 citizens has been inserted in a former part of
 this book. Among their diversions in time of V. Stephan.
 peace, he mentions cock-fighting, and foot-ball: ut supra.
 and says, that in summer the young girls
 danced by moon-light to the musick of the
 harp. In winter, the young men entertained
 themselves after dinner, upon all festival-days,
 with bear-baiting, bull-baiting, and combats of
 dogs with wild boars; or with sliding or scait-

* Perhaps, *four hundred thousand*. See our Noble Author's re-
 mark in p. 477. of this volume. TYROG.

BOOK II

ing on the ice of a great pond, or lake, which was contiguous to the northern wall of the city. But the chief amusement, wherein the greater part of the citizens employed their leisure, was hunting and hawking, which they had a right to do in the counties of Middlesex, Hertford, and Kent, as far as the river Cray, and in all the district called the Chiltern. Fitz-Stephen tells us, that, instead of theatrical entertainments, they had representations of the miracles performed by saints, and of the sufferings of martyrs. It is observed, by the author of a late excellent abridgement of the history of France, that a monk named Geoffry, who was afterwards abbot of St. Albans, being entrusted in those times with the education of youth, caused a kind of pious tragedies to be represented before them, and that the subject of the first of these dramatick pieces was the miracles of St. Catherine. He likewise takes notice, that these spectacles, thus exhibited in this kingdom, were anterior, by more than a century, to the representations of the mysteries in that of France. Fitz-Stephen says, that excessive drinking and frequent fires were the only pests of London. The latter must have been partly occasioned by the former, and partly by the houses being mostly built of wood. Yet there were some of stone, and of a handsome architecture, according to the taste of those days; for the same author affirms, that almost all the nobles of England, and particularly the bishops and abbots, had fine edifices

Vid. Abrégé
Chronol. de
France, t. i.
sub ann.
1179, 1180.

V. Stephan.
ut suprà.

edifices in that city, or in the suburbs thereof, BOOK II.
 where they made great expences, when they
 were summoned to parliaments or to synods.
 He calls London the capital of the kingdom
 of England; (*regni Anglorum sedes:*) which
 title perhaps might have been formerly dis-
 puted by Winchester, the royal seat of the
 West-Saxons, and the place where the Norman
 kings had usually kept their regalia and trea-
 sure. But the latter, having suffered a great
 diminution of its splendour, in the civil war
 between Stephen and the empress Matilda,
 could no longer stand in competition with the
 former. The northern metropolis, York, was
 also much declined from its pristine greatness
 and opulence, by the devastations it had suf-
 fered in the reign of William the Conqueror,
 and by a fire, which had consumed a part of it
 in that of Stephen.

See Camden's
 Britannia,
 HANTSIRE.

Ibidem,
 YORKSHIRE.

As many of the cities, towns, or boroughs,
 as were not portions of the ancient demesne of
 the crown, belonged to the demesnes of some
 spiritual or temporal lord, and were under his
 patronage and protection. But this tenure was
 no more a servitude, than any other soccage
 tenure, either under the crown or the barons.
 Nor were the charters granted to many towns
 by the kings of the Norman race, whereby
 they were declared to be *free boroughs*, char-
 ters of enfranchisement from a state of slavery,
 as some have supposed, but grants or confirma-
 tions of certain privileges, exemptions, and
 favours; such as freedom from tolls and other
 T 3 impositions.

BOOK II.

impositions, which the reader may see enumerated in a charter of King John to the burgesſes of Dunwich, cited by Madox in the eleventh chapter of the History of the Exchequer, p. 276. from whence I have tranſcribed it, into the Appendix to this volume. That author ſays, “ that, when the king granted liberties to any of his demefne manors or towns, he was moved to it by two reaſons: One, the fine paid in hand; the other, the improvement, or (as they anciently called it) the amendment, of the manor or town.” But it appears from the abovementioned charter of King John, and ſeveral other records, that ſome of the towns, to which liberties of this nature were granted, were not only in a ſtate of freedom, but had *gilds* or trading communities before ſuch grants were made to them. In ſome of theſe charters an exemption from tallage was accorded, in others a right to talliate them was expreſſly reſerved. The tallages aſſeſſed upon the king’s ancient demefnes were more heavy than thoſe upon other perſons in the counties, and therefore petitions were made againſt ſuch impoſitions, when laid on thoſe who did not hold by that ſpecies of tenure. Thus, in the ninth year of Edward the Second, the men of the towns of Okham, Egilton, and Langham, complained to the king, that, although their lands and tenements in thoſe towns were not of the ancient demefne of the crown of England; and when the king’s progenitors cauſed their demefne lands to be talliated, they and their

Hiſt. of the
Exchequer,
c. 11. p. 291.

See Tyrrel’s
Append. to
the Hiſt. of
Eng. vol. iii.
p. 152, 153.

See Hiſt. of
the Excheq.
c. 17. p. 499,
500. f.

their ancestors were not wont to be talliated, BOOK II.
 but, in all aids granted to the king and his progenitors *by the community of the realm*, were wont to contribute *with the community of the county of Rutland*; yet lately, when the king assessed a tallage upon his demesnes, in the sixth year of his reign, they were talliated as tenants in ancient demesne, and such tallage was demanded of them by summons of the Exchequer. Whereupon the king commanded the barons of the Exchequer to inspect Domesday-book; and if they found thereby that the said towns were not of the ancient demesne of the crown, and that the men thereof had not been talliated in any former times together with the demesne-lands, *but had always contributed to aids granted to the king's progenitors, and to himself, with the community of the said county*, then to acquit them of the said demand, and release the distresses. It also appears by the rolls of parliament, in the first year of the same king, that when the *communities of the counties* had granted a *twentieth* part of their moveable goods, the *citizens, burgesses, and communities of cities and burghs*, and also *the tenants of the ancient demesne of the crown*, granted a *fifteenth*. Mr. Madox says, "that, as the king had tallage of the demesne-men, so some subordinate or private lords had tallage of theirs: but that many of the lands which were talliable to private lords were such as at one time or other moved from the king, and were wont to

See Rot. Parl.
 i Ed. II. p. 1.
 M. 7.
 Tyrell's Hist.
 of England,
 vol. iii. Ap-
 pend. p. 176.

Hist. of the
 Exchequer,
 c. 17. p. 516.

BOOK II. " be talliated to him while they were vested
 " in the crown. As, when the king granted
 " to a subject a demesne manor or town, to-
 " gether with the homages, aids, tallages, and
 " other profits thereof to hold to the grantee
 " and his heirs; in such case the grantee and
 " his heirs had power to talliate the men
 " of such manor or town to their own use,
 " when the king talliated his demesnes and
 " manors throughout England; but not other-
 " wise, or at other times." Upon the whole,
 the condition of citizens and burgessees hold-
 ing of the crown in those days was never
 worse, but often better, by diverse privileges
 and favors granted to them, than that of all
 its other tenants in ancient demesne, who held
 by free soccage: and the same may be affirmed
 of those who belonged to private lords. Yet,
 that all have been brought into a more per-
 fect and more regular state of freedom, by
 the re-asserting of ancient rights, which the
 application of feudal notions to the course of
 law in this kingdom, or ill practices, had
 impaired, cannot I think be denied. From
 the first entrance of the Normans, till long
 after the times contained in this history, the
 power of restraining and curbing the royal au-
 thority was chiefly in the barons, who often
 connived at an irregular exercise of it, that they
 themselves might be permitted, and even aided,
 by the crown in like acts of sovereignty over
 their vassals, particularly with regard to tal-
 lages, and other such impositions.

Lord

Lord Hale observes, in his History of the BOOK II.
 common law of England, "that William the P. 102, 103.
 " First, after his victory, did, as all wise c. 5.
 " princes would have done, endeavour to
 " make a stricter union between England and
 " Normandy; and, in order thereunto, he
 " endeavoured to bring in the French, in-
 " stead of the Saxon language then used in
 " England: from whence arose the practice
 " of pleading in our courts of law in the
 " Norman or French tongue, which con-
 " tinued till the statute of the thirty-sixth of
 " Edward the Third." But it has been men-
 " tioned before, upon the authority of Ingul- Ingulphus,
 phus, a contemporary historian, that, even in P. 62. Gale's
 the reign of Edward the Confessor, French edition.
 was spoken by most of the English nobility,
 and the Norman forms were used in legal
 proceedings. This made it much less diffi-
 cult for William the First to establish the
 practice taken notice of by lord Hale, which
 indeed was absolutely necessary to enable the
 Normans, whom he appointed his judges, or
 whom he enfeoffed in earldoms or baronies, or
 employed as sheriffs or viscounts, to exercise
 the judicature which belonged to their offices
 or fiefs. It must however be observed, that
 most of the laws and charters of that age,
 and our oldest law-books, Glanville and Brac-
 ton, were written in Latin. Ingulphus tells
 us, that, in the reign of William the Con- Gale's edit.
 queror, children were taught their first rudi- P. 71.
 ments, not in the English but French lan-
 guage.

BOOK II.

guage. Yet the desire, which, he says, was shewn by the Normans, to abolish the use of the English, was never effected: but, on the contrary, from the intermixture of the two nations, a language was formed, in which the Saxon was much more prevalent than the Norman or French. We have a charter of King Henry the Third in the English of that time, which, as it is curious to see how near the language then written approached to that of the present century, I have given, with a translation of it into modern English; in the Appendix to this volume, from Mr. Tyrrel's Appendix to the third volume of his history of England. No small part of the difference between the original and the translation appears to be in the comparative length of the words, which we have now abridged, by leaving out some of the vowels then inserted, and omitting the syllable *en* at the end of many verbs; as, for example, writing *land* instead of *loande*, and *send* instead of *senden*: an alteration which has not added to the harmony of the tongue. But there are in the Cotton library some manuscript historical poems, composed in Norman French, by a reading clerk, named Wace, to whom (as he tells us himself) King Henry the Second gave a prebend at Bayeux, and many other benefactions. They have nothing to distinguish them from the dullest chronicles of that age, but metre and rhymes. Yet as they are a specimen of what was then imagined to be

be poetry, I have transcribed some of them BOOK II.
 into the Appendix annexed to this volume.

The poets of Provence wrote something better; of which we need no other proof than the verses composed in their style and dialect by King Richard the First: but the best of the French *romanciers* were very inferior in genius, and the spirit of poetry, to the ancient Gallick and British bards, or even to the Saxon and Danish poets before their conversion to Christianity, which seems to have taken from them that wild greatness of imagination and sentiment, discoverable in some of their ancient poems. There is no book written in French or English prose, during the period which I treat of, that has come down to these times. Indeed those who in that age were best qualified to be authors all wrote in Latin. The familiar letters that passed between Becket and his friends, and all the dispatches of business, sent to or from him in his exile; nay, the very love-letters between Abailard and his disciple and wife Heloisa, after their unfortunate separation; were written in that language. It is justly observed by Mr. Inett, in his Ecclesiastical History, “ that the conclusion of the seventh, and the beginning of the eighth century, have a taste of learning, that is no where else to be met with in the English writers before the Norman conquest: but the writings of Adhelm bishop of Sherburn, of Ceolfrid abbot of Jarrow, and tutor to Bede, and those of Egbert bishop

See Inett's
 History of
 the English
 church, p.
 161. c. 10.

“ of

BOOK II. “ of York, and Eddius, and Bede, who all
 “ lived during that period, so exhausted the
 “ genius of the English nation, that, except
 “ Alcuinus and Clemens, who were bred un-
 “ der Egbert, not long after Bede, and who,
 “ in the latter end of the eighth and the be-
 “ ginning of the ninth century, made so great
 “ a figure in France, we find nothing like it in
 “ the succeeding ages, till the Norman inva-
 “ sion brought the spirit of this age to life
 “ again.” One principal cause of that de-
 clension was the ravages of the Danes. The
 great Alfred expressed his grief, that whereas, in
 times past, foreigners came to England in search
 of wisdom and learning, the English them-
 selves, in his days, were forced to go abroad to
 seek for them; while so gross an ignorance
 overspread the nation, that very few priests,
 south of the Humber, could understand the
 ordinary service of the church, and he knew
 none, south of the Thames, that could turn a
 piece of Latin into English. Through the in-
 defatigable application of this admirable prince
 to the remedy of this evil, by bringing over
 learned foreigners, and by the example which
 he gave himself to his subjects, science began,
 under him, to revive in England; but it de-
 clined again under his successors, and con-
 tinued in a low state till the entrance of the
 Normans.

V. Affer. de
 Ælfredi rebus
 gestis, p. 27.
 Camden. An-
 glica-Nor-
 manica, &c.

A late French writer takes notice, that Wil-
 liam the Conqueror protected letters, and that
 they had great need of his patronage, in a time
 when

when books were so rare, that Græcia, countess BOOK II.
of Anjou, bought a collection of homilies at the
price of two hundred sheep, a bushel of wheat,
another of rye, a third of millet, and some
skins of martins. But it is probable, that the
dearness of this particular book was rather owing
to an extraordinary value set upon it, by
those who sold it, or recommended it to the
countess, than to the general scarcity of books
at that time: for we know that few of the
greater convents, in France or in England,
were unfurnished with libraries, and the diffi-
culty was rather to find men who could read
them. However this may have been, it is cer-
tain that the Normans brought with them in-
to England a taste for learning. The nobles,
indeed, were, for the most part illiterate; but
they valued knowledge in the clergy; and, as
King Henry the First had himself attained to a
good proficiency in it, his example induced
some of the lords of his court to cause their
children to be instructed in all the learning of
those times. William of Malmesbury tells us,
that, in an interview between Henry and Pope
Calixtus the second, the young sons of the
earl of Meulant were brought forth by the
king to dispute with the cardinals in logic,
which they did with so much vivacity and sub-
tilty of reasoning, that it raised a great admi-
ration in their antagonists, and obliged them to
acknowledge, that learning flourished more in
these western parts of the world, than they in
Italy had heard or imagined. In the eighteenth
year

Abrégé
Chron. de
l'Histoire de
France, p.
154. sub ann.
1087.

V. L. v. de
H. I. f. 90.
sect. 20. B.

BOOK II. year of that reign died Florence of Worcester, who compiled in Latin a Chronological History of the World, and brought it down, with a particular and no contemptible account of the affairs of this island, to the year of our Lord eleven hundred and seventeen. A contemporary history of the chief events relating to the church of England, in the reigns of William the First and his two successors, till the year eleven hundred and twenty-two, was not inelegantly written in the same language by Eadmer, a monk of Canterbury. But the civil commotions in Stephen's reign were unfavourable to letters, and stopt the progress which probably they would have made under the patronage of King Henry's son, the earl of Gloucester, if that nobleman, who inherited all his father's good qualities without his faults, had been more at leisure to cultivate the arts of peace. Nevertheless, even that unhappy and turbulent time did not prevent him from encouraging the best genius for history that ever England had yet produced, by the favour he shewed to William of Malmesbury, whose merit I have already had occasion to speak of in the former parts of this work. Another ornament of the reign of Stephen, was Ethelred abbot of Rievaulx, who is equal, if not superior, to William of Malmesbury in the elegance of his stile, but falls short of him in judgement and weight of sense. Simeon of Durham and Henry of Huntingdon, no mean historians, wrote also in those times. Roger de Hoveden, who was a chaplain

chaplain to King Henry the Second, has left us **BOOK II.** two books of annals, carried on from the year seven hundred and thirty-two to the year twelve hundred and one, the fourth of King John; in the first of which he has borrowed much from the two writers abovementioned, and in the second from Benedict abbot of Peterborough, who wrote a history of the reigns of Henry the second and his son Richard, beginning in the year eleven hundred and seventy, and ending in eleven hundred and ninety-two. But, though much was stolen by this author, he added enough of his own to give him a considerable rank, in the opinion of Sir H. Saville and Mr. Selden, among the many historians who flourished in the eleventh and twelfth centuries. William of Newbury, one of these, deserves to be mentioned with particular praise, for having had the courage, though a monk, to express an approbation of King Henry the Second's design of reforming his clergy, by bringing them under the coercion of the secular power; and to censure Becket, after Rome had declared him a saint, *for want of moderation and discretion in many parts of his conduct.* Another instance of the good judgement, and honest regard to truth, which appears in this author, is the having treated the fables of Geoffry of Monmouth with the contempt they deserve, although they were then so much in vogue, that to oppose the delusion was little less dangerous, than to call in question any error of popular superstition established or au-

thorised

BOOK II.

thorised by the church. This sincerity has drawn upon him, in much later and less ignorant times than his own, the displeasure of Humphrey Lhuyd, and some other Welsh writers: so hard is it to eradicate, from the minds of an ancient people, the fond belief of any fiction, in which they imagine that the glory of their nation is concerned!

Canutus, a monk of Canterbury, is said to have made an abridgement of Pliny's Natural History, and to have dedicated his work to King Henry the Second. Of Giraldus Cambrensis some mention has been made in former parts of this work; and I shall have occasion to say more in giving an account of the affairs of Ireland which he has recorded. It will be sufficient to observe in this place, that if too much love of *the marvellous*, and a rancorous hatred of King Henry the Second, which he contracted before the end of that prince's life, had not corrupted his veracity and dishonoured his judgement, he would have stood high in the catalogue of English historians who flourished during that reign. Several others might be named, who excelled in wit or learning about the same period; but of all these the most eminent were Peter of Blois and John of Salisbury. Peter of Blois had been made preceptor to William the Second, King of Sicily, in the year eleven hundred and sixty-eight, through the recommendation of Stephen archbishop of Palermo, and chancellor of that kingdom; but the following year, upon the disgrace

See Aubrey's
Memoirs of
the county of
Wilts, p. 221.
223. et Balæus
Cent. 3. n. 4.

V. Præfation.
ad opera
Petri Blesensis.

disgrace and banishment of his patron, he retired into France; from whence he was presently invited into England by Henry the Second, who afterwards employed him, as his private secretary, in many important affairs. From one of his letters it appears, that he had undertaken to write a history of the acts of that prince, and had almost completed it before the end of his reign. Whether it ever was published is uncertain; for no other trace of it has come down to our times: which may be justly lamented, as, from the confidence Henry had in him, he must have been better informed, than any other historian in those days, both of facts and counsels; nor was any more capable of conveying them to posterity with spirit and energy, which all his works are very full of, besides a great erudition, and an admirable fervour of virtue and piety. There is likewise in them a noble freedom, becoming a Christian philosopher, in reprehending the faults of persons in high stations, and rigorously censuring the disorders and corruptions of the clergy: but, unhappily, he did not reckon a desire of independence on the civil authority, and an absolute subjection to the pope, among those corruptions. On the contrary, he esteemed them essential parts of their duty. The same notions also prevailed in his friend, John of Salisbury, who appears to have been little inferior to him in learning, and superior in the graces and ele-

BOOK II.

V. Petri Bles.
Epist. 127.

149.

Epist. 144

BOOK IIgance of his style: tho' neither was he quite exempt from the barbarisms of the age. Some of his letters are animated with a spirit of liberty, which would have done honour to a Greek or Roman republican; but, with regard to the church, he extended his ideas of liberty to an exemption from all obedience to the secular power. This rendered him so zealous in Becket's cause, that he attended him in his exile; and it will be seen in the following book of this history, that he was the most active of his agents in France, and trusted by him the most deeply. Nor did this attachment cease even after the death of that prelate; for he became one of the many who wrote accounts of his life, with much more regard to his honour than to truth or sincerity. Indeed what he has left on that subject is unworthy of his own character; and the offence his whole conduct had justly given to the king, during the course of the difference between that prince and Becket, excluded him from those favours which his merit would have otherwise entitled him to, in a court where none was neglected, and where a particular regard was shewn to genius and learning. It is observable, that his writings, as well as those of Peter of Blois, are full of citations from the Latin classics, a taste for which was then rising in France and England, and would, probably, have gone far towards refining the age, if the minds of men had not been turned from cultivating those studies to the

the subtleties of school divinity, which Rome ^{BOOK II.} encouraged as more profitable for the maintenance of her doctrines. The first teachers of this new art were two archbishops of Canterbury, Lanfranc and Anselm; to whom succeeded Peter Abailard, the brightest wit of those times: but the most illustrious master of it was Peter Lombard, made bishop of Paris in the year eleven hundred and fifty-nine. It was a great misfortune to religion, and to learning in general, that men of such acute understandings as Abailard and Lombard, who might have done much to reform the errors of the church, and to restore science in Europe, should have depraved both, by applying their admirable parts to weave these cobwebs of sophistry, and confound the clear simplicity of evangelical truths by a false philosophy and a captious logick. I cannot mention Abailard, without taking notice, that if his fair disciple Heloise, instead of being compelled to read the fathers, or the legends of saints, in a nunnery, had been suffered to improve her genius by a continued application to polite literature, one may venture to say, from what appears in her letters, that she would have excelled in it more than any man of that age.

Of the state of learning at Oxford, in the ^{See Camden's} reign of which I am treating, I find little men-^{Britannia,} tion. But Ingulphus says, that he learned ^{OXFORD-} Aristotle in the schools of that city; and another writer informs us, that, under the auspices

BOOK II.

of king Henry the First, the divinity lecture, which had been discontinued a long time in Oxford, began again to flourish. The civil war in the reign of Stephen must have disturbed and interrupted the studies there; but probably they revived again under Henry the Second: for we find, that in king John's time the number of students was three thousand. And Matthew Paris calls the university of Oxford, *the second school of the church; nay, rather a ground-work of the church, next after Paris.*

Of the schools at Cambridge, from the reign of Henry the First till that of Henry the Second, inclusively, Peter of Blois, in his continuation of Ingulphus, has given an account, which is thus translated in the last edition of Camden's Britannia: " Abbot Joffred sent over to his manor of Cotenham, nigh Cambridge, Gislebert, his fellow-monk and divinity-professor, with three other monks, who followed him into England; and, being well furnished with philosophical learning and other ancient sciences, they daily repaired to Cambridge, where they hired a publick barn, made open profession of the sciences, and in a little time drew a great number of scholars together. In less than two years their number encreased so much, out of all that country as well as the town, that there was not a house, barn, or church, big enough to hold them all. Upon which they dispersed themselves into several

See Camden's
Britannia,
CAMBRIDGE-
SHIRE.

“several parts of the town, imitating the BOOK II.
 “university of Orleans. Betimes in the morn-
 “ing Frier Odo, an excellent grammarian
 “and satyric poet, read grammar to the boys
 “and younger sort, who were assigned him,
 “according to the doctrine of Priscian and
 “Remigiſius upon him. At one o’clock, Ter-
 “ricus, a ſubtle ſophiſt, read Aristotle’s
 “logick to the elder ſort, according to Por-
 “phyry’s and Averroe’s introductions and
 “comments. At three of the clock Frier
 “William read lectures in Tully’s rhetorick,
 “and Quintilian’s institutions. And Giſlebert,
 “the principal maſter, preached to the people
 “upon all fundays and holidays. From this
 “ſmall fountain we ſee large flowing
 “ſtreams, making glad the city of God, and
 “enriching the whole kingdom with many
 “maſters and teachers, who came out of Cam-
 “bridge, as from the holy paradise,” &c.

Whether this was the firſt beginning, or only
 a revival, of learning in this town, it will
 not be neceſſary to investigate here. But Mr.
 Camden takes notice, that the name of *univer-* See Camden’s
ſity was not uſed till about the time of Henry Britannia,
 the Third, and then not for the place, but for OXFORD-
 ſhire.
 the body and ſociety of ſtudents.

In a letter to Becket from John of Salisbury Epiſt. T.
 this deſcription is given of the ſtate of learning Becket è
 at Paris: “*When I beheld* (ſays he) *the reve-* Cod. Vatic.
rence paid to the clergy, the majeſty and glory l. i. epiſt. 24.
of the whole church, and the various occu-
pations of thoſe who applied themſelves to
“ philoſophy

BOOK II.

“ *philosophy in that city, it raised my admiration, as if I had seen the ladder of Jacob, the top of which reached to heaven, and the steps were covered with angels ascending and descending.*” On this passage I would observe, that the learning of the clergy in those days was a mighty assistance to their power, and to what this writer calls *the majesty and the glory of the church*. For, as it was almost confined to them, princes were under a necessity to employ them in much of their business; and the superiority it gave them over the ignorant laity, though great in reality, was greater still in opinion. The degree of it, which Henry the Second had attained to, helped to shew him the enormity of the encroachments they had made on the civil authority, and strengthened his mind to resist them. It was likewise of no little advantage to him, that some of his nobles had a sufficient tincture of knowledge, to be able to serve him in the highest offices of law and justice. Upon the whole, it may be said, that a beam of light, in the twelfth century, began to break through the clouds of Gothic ignorance and barbarism, but was soon afterwards obscured by a thicker darkness.

The great increase of religious houses must be reckoned among the evils of this age. The author of the *Notitia Monastica* computes the number of such houses, built in England, during the reigns of Henry the First, Stephen, and Henry the Second, at no less than three hundred. And Mr. Inett asserts, that more monas-

V. Præfat. ad
Not. Monast.

monasteries and other religious societies were founded in that kingdom during the single reign of Henry the First, than in five hundred years before. But he rightly observes, that this was not peculiar to this nation. The high opinion of the merit of such foundations, infused into the minds of the laity, by the divines of those days; the hopes of compounding in this manner with the Deity for the greatest offences; but more especially the liberty, granted by the pope, of commuting for vows made to go to the Holy wars by benefactions of this kind; filled all Europe with convents. In the year eleven hundred and fifty-two, the Cistercian order, which had been founded in one thousand and ninety-eight, had no fewer than five hundred. Among other causes of the increase of monasteries in this kingdom, may be reckoned the civil war with which it was afflicted during the reign of King Stephen. For many of the nobility engaged in those troubles endeavoured to atone for the pillage of the people, and other crimes they had committed, by raising or endowing religious houses; and others desired to secure for themselves and their children a quiet asylum in these places. The pernicious consequences of such numbers of men and women being confined to a life of celibacy were grievously felt in the reign of Henry the Second, by continuing and increasing the depopulation of the country, which the commotions in that of his predecessor had occasioned. Nor was it

BOOK II.

History of
the English
Church, p.
172. c. 9.See Dugdale's
Baronage,
part I. &
Monasticon.

BOOK II. a small inconvenience to the government of this monarch, in his disputes with the pope, that he had so many persons in his realm, who, by their separation from society, and the nature of their institutions, were more devoted to the see of Rome than the secular clergy; which difference shewed itself, upon several occasions, in the conduct of both. And the practice of exempting monks from the proper authority of the diocesan bishops increased this mischief. Such exemptions took their rise from what was done by William the Conqueror in favour of Battle-abbey; which made others, and more especially those of greater antiquity, endeavour likewise to free themselves from the episcopal jurisdiction, by pretended ancient charters, the forgery of which was not discovered, or not regarded, by our kings, who thought that they advanced the royal prerogative by supporting these claims, and making other grants of a like nature. In the year eleven hundred and fifty-four, the abbot of St. Alban's obtained a bull from Pope Adrian, to exempt the abbey and their dependants, not only from the jurisdiction of the bishop of Lincoln, their diocesan, but from all episcopal authority, and to subject them only to that of the apostolical see; an innovation in the constitution and discipline of the church till then unknown in England, and which in France had been justly condemned by Bernard, who declared in one of his writings, "that the uniting of religious houses to the Holy see, in this manner, was

" as

“ as monstrous and unnatural a deformity in **BOOK II.**
 “ the church, as it would be in the natural
 “ body to unite the finger to the head !”

Besides the danger to the state from the independence of these communities on all power but the papal, which was thus procured and established during the times I write of, the great proportion of land, over and above all the former possessions of the church, now thrown into *mortmain*, and the quantity of silver taken out of circulation, by the ornaments with which so many convents were decorated, must have been very hurtful to the trade and revenues of the kingdom.

There is in the Cotton library a manuscript treatise of Giraldus Cambrensis, which affirms that William Rufus had conceived a design of taking from all the monasteries, or religious houses, in England, founded and endowed by the English, all their lands and possessions, or the greater part thereof, and converting them into knights-fees; saying, that near one half of the kingdom had been bestowed on the church, from all which little or nothing could be drawn by the government, in any exigence whatsoever, for the defence of the state. If this were true, it would account, more than any other reason, for the odious colours in which his character has been painted by the monks: but nothing is said of it by any contemporary writer; and even in the time of Richard the Second, after vast additions had been made to the wealth of the church, and particularly by the foundation

V. MSS. Cotton.
 Julius B.
 xiii.

BOOK II.

See the Parl.
History of
England, vol.
i. p. 383,

tion of so many more religious houses, all the possessions of the regular and secular clergy were not estimated at more than a third of the kingdom, as appears by a protestation of the house of commons in that reign. Besides, it was false, that in the time of William Rufus little or nothing could be drawn from the lands of the church to the defence of the kingdom: for, all the bishopricks and abbies of royal foundation being then converted into baronies, they contributed to it equally with the other baronial possessions. Nevertheless it is possible that this story may have had some grounds of truth: for William Rufus might naturally entertain a desire, if not a settled purpose, of taking away some of the lands of such abbies and convents as were not charged by his father with any military service, and turning them into knights-fees. However this may have been, it is certain that the opulence of the monks, as well as the number of them; in the times of Henry the Second, was enormous. And the luxury, in which men professing poverty lived, was scandalous and offensive to the common sense of mankind. We have in one of the treatises of Giraldus Cambrensis a description of the table which was kept by the monks of Canterbury, and which consisted regularly of sixteen covers, or more, of the most costly dainties. These, he tells us, were dressed with the most exquisite cookery, to provoke the appetite and please the taste. He also speaks of an excessive abundance of wine, particularly

V. G. Camb.
De rebus à se-
geitis, part II.
c. 5. in
Angliâ Sacra,
vol. ii. p. 480.

particularly claret; of mulberry wine, of mead, and of other strong liquors, the variety of which was so great in these repasts, that no place could be found for ale; though he informs us, that the best was made in England, and particularly in Kent.

There is likewise an account in the same author, "that the prior and monks of St. Winthorp at Winchester threw themselves prostrate at the feet of King Henry the Second, and with many tears complained to him, that the bishop of that diocese, to whom they were subject as their abbot, had withdrawn from them three of the usual number of their dishes. Henry enquired of them, how many there still remained: and, being informed they had ten, he said; *that he himself was contented with three*; and imprecated a curse on the bishop if he did not reduce them to that number." I repeat this story, rather to shew the temperance of the king, than the excess of the monks.

In what manner the laity feasted in those days, John of Salisbury has given us a short description. He says, the houses, on such occasions, were strewed with flowers; and the jovial company drunk wine out of gilded horns, and sung songs when they became inebriated with their liquor. This is a better account of the festivity of our ancestors, than that given by Froissard, who says that the English, in the time of Edward the Third, *s'enyvroient moult tristement, a la façon de leur pays,*

BOOK II. *pays, got drunk in great sadness, after the manner of their country.* In the time of Henry the Second, and for ages afterwards, the great halls of the castles, or principal manor-houses, in which the nobility and gentry resided, were crowded with vast numbers of their vassals and tenants, who were daily fed at their cost; and, in order to supply the constant plenty required for such profuse hospitality, they kept in their hands large demesnes, which were cultivated by their villeins; and received their rents, not in money, but in divers kinds of provisions, from many of those farmers to whom they had granted freehold lands, adjacent to their seats. This way of living, still more than the feudal obligations, attached the vassals to their lords, and enabled these to become formidable to the power of the crown. When the weather permitted it, the chace drew together all the neighbouring gentry; nor was it difficult, in such meetings, to form or put into action those factious confederacies, to which the genius of the people was strongly inclined. It must be observed, that to be skilful in the arts of hunting and hawking, was anciently esteemed one of the requisite qualifications for chivalry, and preferred to all other knowledge. The Lombard laws and the capitularies forbade a gentleman to sell his sword, or his hawk, even for the payment of his ransom. This sort of chace, which was a distinguishing privilege of the nobles, delighted them the more, as the ladies took part in it, and appear to have

have made it their principal amusement. The BOOK II. high and romantic gallantry, which prevailed in those times, must have given the fair sex such ideas of themselves, as were much above the character of mere good housewives, though most of their time was employed in household cares. And, from what we read of some ladies in the twelfth and thirteenth centuries, there is reason to believe, that their minds were elevated by those ideas to a more than ordinary pitch of greatness. It is likewise probable, that the imitation of royal state, which the great barons kept up in the establishment of their households, and the whole manner of living at their habitations in the country, not only drew to them the reverence of the people, but so raised their thoughts of their own dignity, that it was difficult for them, in their attendance on the king, to consider themselves as his subjects, and much more to descend to any servile obedience.

Some of the nobles in the age of which I write, and especially the bishops, were magnificent builders. Giraldus Cambrensis informs us, that Henry de Blois, bishop of Winchester and brother to king Stephen, had, during the anarchy of those times, presumed to pull down the royal palace of Winchester, which was not inferior to that of London, either in the extent or quality of the buildings, because it stood too near his church; and, that nothing might be wanting to compleat this offence against the majesty of the crown, even ventured

V. G. Camb.
De vitis Sex
Episcop. coë-
taneorum in
Angliâ Sacra,
vol. II. p. 421.

BOOK II. ventured to carry off and employ the materials in erecting a fine palace for himself and his successors in another part of that city. The same author speaks of other works of this prelate, for the embellishment of his seats, which appeared to exceed the power of kings themselves; particularly vast ponds, supplied by aqueducts, carried on with much difficulty and expence, or by waters brought through various windings, and from a great distance, under ground. He had likewise *menageries* of birds and beasts from all parts of the world; a kind of magnificence which he seems to have taken from his uncle, king Henry the First, who (as William of Malmſbury tells us) had an enclosure in his palace of Woodſtock, where he kept a variety of rare animals, presented to him by foreign kings, at his own earnest request; among which, lions, leopards, lynxes, camels, and a porcupine, are mentioned by that historian. He also describes two very spacious and beautiful castles, erected, at an immense charge, in the reign of king Stephen, by Roger bishop of Salisbury; the stones of which were so closely and so artfully joined together, that they seemed to be all one solid rock.

By many evidences it appears, that a luxury in apparel was very general among the nobles and gentry of that age. Even the nuns were not free from it, as may be inferred from a canon of the legatine synod at Westminster, in the year eleven hundred and thirty-eight, which

See Spelman's
Councils,
vol. II. p. 41.

which, under pain of an anathema, forbids them to use the parti-coloured fables, called in French *petit gris*, martin, ermine, and beaver skins, or golden rings; or to curl or curiously set their hair. William of Poictou takes notice, that the English women in this time, viz. in the reign of William the Conqueror, excelled in embroidery; and tells us, that the garments of those English noblemen whom that prince carried over with him into Normandy, in the first year of his reign, were richly interwoven and incrustated with gold. He says also, that among the men of that nation there were good artificers of all sorts; that Germans, or Dutchmen, very skilful in all the finer manufactures, were used to settle among them; and that foreign manufactures were imported from the most distant countries by merchants trading to England. As one can hardly imagine that this writer, who came over with the duke of Normandy, was partial to the English, I think this account of their opulence, commerce, and industry, which he gives us as an eye-witness, is of no small weight. Nevertheless, as we are told by William of Malmesbury, in a passage I have cited before, that the garments of the English, before their intermixture with the Normans, were generally plain, I presume that the embroidery, and other fine manufactures, spoken of by William of Poictou, were only worn by the nobility of the first rank. But it appears, that, in the times of Henry the Second, the whole

Vid. Picar,
gest. Gul.
Ducis, p. 211.

BOOK II. whole gentry of England, having adopted the fashions of the Normans, were as magnificent in their dress as their fortunes could bear. And we are informed by Ordericus Vitalis, that, during the reign of William Rufus, the mode of apparel was changed, not only in England, but all the western parts of Europe; so that, instead of close coats, which had been used till that time, as most commodious for exercise and a military life, trailing garments with long sleeves, after the manner of the Asiatics, were universally worn. The men also were very nice in curling and dividing their hair, which on the fore part of their heads they suffered to grow very long, but cut short behind. The extraordinary fervour of zeal expressed by Anselm, and other churchmen of that age, against this fashion, seems ridiculous; but we find from the words of the above-mentioned historians, that they combined it with the idea of an affected effeminacy, and supposed it to indicate a disposition to an unnatural vice, which was very prevalent in those times. The good prelate, whose piety was so much scandalized at it, would have done well to consider, how much more the celibacy to which he forced the clergy, and the number of monasteries in this kingdom, might contribute to increase that abominable wickedness, than any mode of dress. And indeed we are told that his preaching prevailed with the English to cut their hair, but could not reform their morals.

I find

L. viii.

p. 682. sub
ann. 1089.

V. Ord. Vit.
ut supra.

I find no grounds upon which I can form any estimate of the number of people in England, during the reign of King Henry the Second. One cannot judge of it by the number of inhabitants in the capital; because, from the manners and policy of the times, the people lived more dispersed than they usually do in these times. The king's court was not fixed; and every district had a lesser court of its own, in the castle of an earl or great baron; which rendered the country more populous, in proportion to the metropolis of other principal cities, than it is at present. It general it may be said, that the *police* then established, which forced the common people into an orderly way of living, and the hardy and healthy education given to persons of both sexes, must have been greatly conducive to propagation.

Sir Henry Spelman observes, from the lesser Domesday-book, that in all the county of Norfolk, which is above fifty miles in length, and about thirty in breadth, there were, at the time when that register was compiled, but sixty-six lords of manors, who had the property of the soil. Under these all the rest of the free inhabitants of that province held by subinfeudation; nor was the proportion much greater in other parts of the kingdom. But, during the reigns of Henry the First and his two next successors, property became more divided, and the number of landholders in chief was considerably augmented: yet it appears

BOOK II.

from Dugdale's Baronage, that, till long after the death of Henry the Second, the earls and barons were possessed of vast estates; and the far greater part of all the lands of England was held by them in demesne, or under them by mesne tenants. Of the exact number of the peerage in Henry the Second's reign I find no account. But Mr. Selden has shewn from the close rolls of the forty-seventh year of Henry the Third, that a hundred and thirty temporal, with fifty spiritual barons, were summoned by that king to perform the military service due by their tenures. And it appears by a record, that in the thirty-fifth year of Edward the First, eighty-six temporal barons, twenty bishops, and forty-eight abbots, were summoned to a parliament convened at Carlisle.

See Titles of honor, par. II. c. 5.

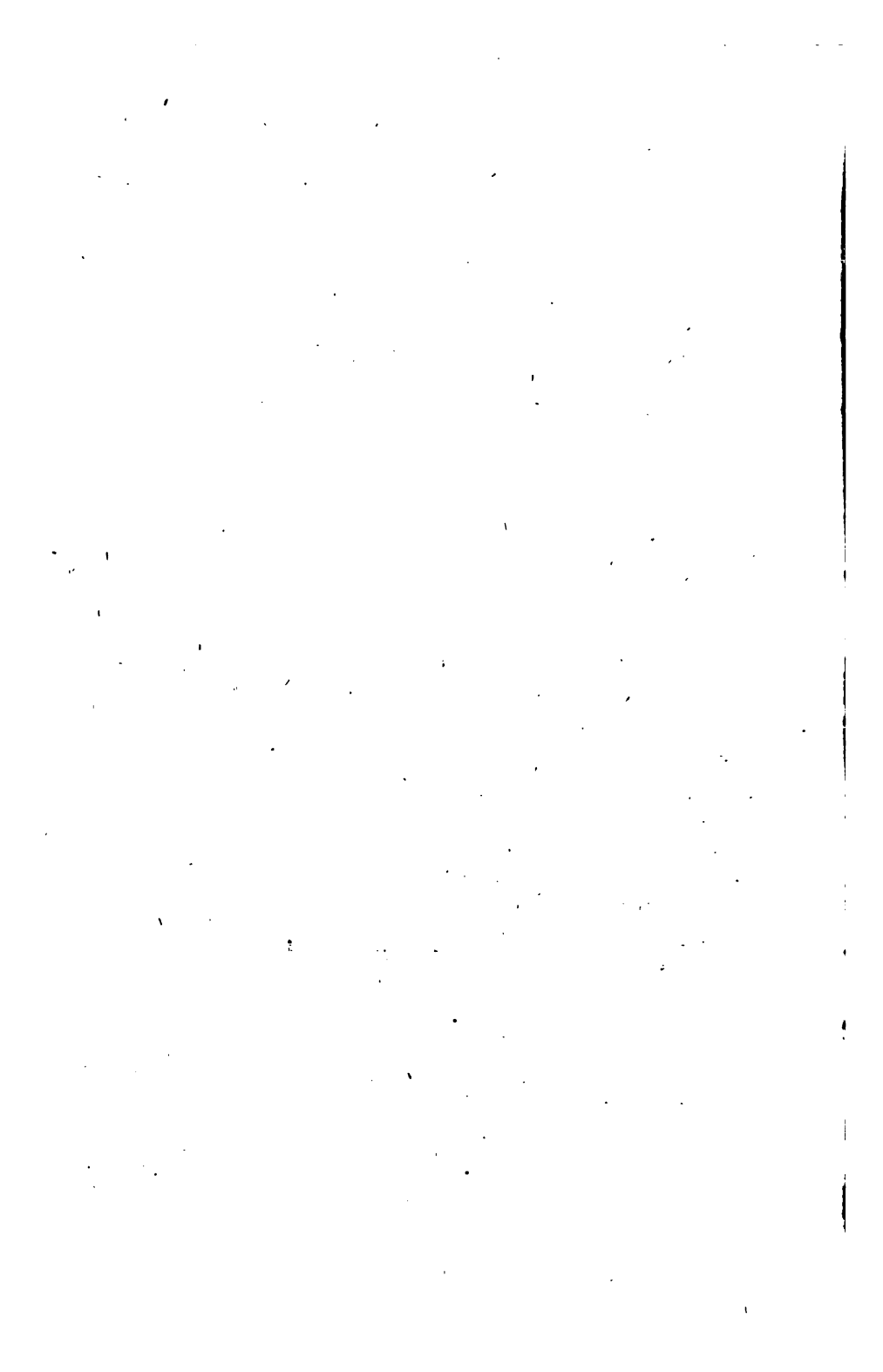
See the Parliamentary History, vol. i. p. 151.

I shall conclude this account of the civil and political state of the kingdom, during the times of which I write, with two remarks; first, that the privileges granted, or confirmed to the nation, within that period, though often violated by our kings, were perpetually reclaimed, and restored, from time to time, by new confirmations, the last of which was *the bill of rights*, that great compendium of our ancient, constitutional liberties, the glory of this, and the envy of every other state: Secondly, that, for some ages after the settlement of our government by King Henry the First, the high spirit of the nobles, and the ferocity of the people, were stronger fences to both against oppression and tyranny, than laws

or

or charters ; but, at the same time, had such a tendency to disturb the tranquillity and order of society, that these could hardly be preserved, even in the reigns of good princes, without some such exertions of the royal authority as approached too near to an illegal and arbitrary power. But in later times, as the temper of the nation grew milder, the same rigour in government was no longer requisite, or fit to be used ; and liberty ceasing to border upon anarchy, the regal part of our constitution could, with safety to the publick, be set at still a further distance from absolute monarchy. In the present state of our whole political system we have nothing to wish, but that the spirit of liberty may be moderated with such discretion, and supported with such firmness, as that we may never again find it necessary to seek a remedy against anarchy in an extension of prerogative ; nor yet be drawn by the corruption and dissoluteness of manners, which too naturally attend a high degree of politeness, to relax the ancient British vigour and dignity of mind, which hitherto neither violence has been able to subdue, nor prosperity to enervate.

END of the SECOND BOOK.



NOTES

ON THE

THIRD VOLUME

OF THE

History of the Life of King HENRY
the Second.

PAGE 13. *who remained in the monastery of* **BOOK II.**
Bourgdiou, in Berry.

This convent is called, by the historians of those times, *Monasterium Dolense*; and pope Alexander's letters from thence are dated *apud Dolum*, because it was founded by the lords of *Deols*. A castle adjacent to it is, for the same reason, called *Castrum Dolense*. It must not be confounded with Dole in Franche Comté.

V. Boulanvil-
liers Etat de
la France, t. ii.
p. 201.

P. 21. *Nay even these biographers themselves acknowledge, that one reason which induced Henry to promote him to Canterbury, was, because he hoped, that, by his means, he should manage ecclesiastical, as well as secular affairs, to his own satisfaction.*

This is confirmed by Fitstephen, another of Becket's historians, in the following words: "Sta-
" tuit ergo rex Angliæ cancellarium suum in archi-
" episcopatum promovere, intuitu meritorum per-

V. Stephan.
in vitâ S. T.

BOOK II. "sonæ, confidens, quod sibi ad placitum et nutum, ut
"cancellarius fecerat, archiepiscopus obsequeratur."

P. 38. *They did not deny the words which were laid to their charge; but alledged, that they were spoken when their minds were heated and disordered with wine.*

V. G. Cambrensis, de Vitis
fex Episcop.
coetaneor. in
Angl. sacra,
par. ii. p. 427.

Giraldus Cambrensis, from whom I relate this particular, tells us, that one of the company said to Henry, "*Perhaps we did say the words we are charged with; and we should have said still worse, if our wine had not failed us.*" As Plutarch ascribes the very same answer to some subjects of Pyrrhus, in his Life of that prince, I rather suppose, that this historian applied the expression he found in that author to a similar case, than that it was used in this instance. But, as it is certain he was far from being disposed to invent any fiction to King Henry's advantage, I make no question that this story is true in the main; to wit, that some persons, accused before that monarch of having talked of him too freely over their cups, pleaded their ebriety in excuse of it, and were generously forgiven. It is observable, that Giraldus particularly mentions the bishop of Worcester, as implicated in this affair; a prelate whose name he would hardly have made use of, without good authority, upon such an occasion.

Another remarkable instance of Henry's clemency and good-nature towards the same prelate is given by Firststephen. He tells us, that the bishop, who was son to Robert earl of Gloucester, and had been bred up with the King under his father's tuition, reproached that monarch, in an angry conversation between them, with having acted unkindly towards his brothers and himself, which was an ill requital of the great services done by that nobleman to him
and

and his family; and also with detaining the revenues BOOK II.
of the church. These complaints being made in the hearing of many persons, with great freedom and sharpness, a knight of Aquitaine, who was present, and did not know the bishop, enquired, who it was that spoke to the king in such a manner? And being told, he made answer, *that it was happy for the king the man was a priest; for had he been a soldier, he would not have left that prince two acres of land.* Whereupon another of the court, thinking to recommend himself by it to Henry, chid and threatened the bishop. But the king took his part, and severely reprimanded the officious zeal of the courtier.

P. 40. *The king's good-humour seems indeed to have been sometimes too playful in the eye of the public.*

Of this Fitzstephen has given us an extraordinary instance. He tells us, that one day, as the king and Becket, his chancellor, were riding together through the streets of London, in cold and stormy weather, the king saw coming towards them a poor old man in a thin coat worn to tatters. Would it not be a great charity (said he to the chancellor) to give this naked wretch, who is so needy and infirm, a good warm cloak? Certainly, answered that minister, and you do the duty of a king in turning your eyes and thoughts to such objects. While they were thus talking, the man came near; the king asked him, if he wished to have a good cloak? and, turning to the chancellor, said; *You shall have the merit of this good deed of charity*: then suddenly laying hold on a fine, new scarlet cloak lined with furr, which Becket had on, he tried to pull it from him, and after some struggle, in which they had both like to have fallen from their horses, prevailed. The poor man had

V. Stephan.
in vitâ S. T.
Cantuariensis, p. 16, 17.

BOOK II. the cloak; and the courtiers laughed, like good courtiers, at the pleasantry of the king.

P. 44. *Before her death, she retired to the nunnery of Godstow, near Oxford, and there she died—Henry bestowed large revenues on the convent, &c.*

In the Dissertation concerning Fair Rosamond, annexed to the fifth volume of Rapin's History of England, translated by Mr. Tindal, fourth edition, the authority of Nicholas Trivet is quoted to prove, that the nunnery of Godstow was founded by King John. But that it was founded in the reign of King Stephen, and that the body of Rosamond was deposited there during the life of her lover, King Henry the Second, appears undeniably from several records, that are published by Dugdale, in the first volume of his Monasticon, and in the additions to it annexed to the second. Another mistake, made in the Dissertation abovementioned, is the supposing that the bishop of Lincoln, who ordered the body of Rosamond to be removed out of the church, was the famous Grostest, who held that see under Henry the Third; whereas it was done in the reign of Richard the First, anno dom. 1191, by Hugh, bishop of Lincoln; as we are informed by Roger de Hoveden, who lived at that time. There is in the Monasticon a fragment from Leland, which says: "Rosamonde's Tombe at Godestowe Nunnery was taken up a late: it is a stone with this inscription *Tumba Rosemunda.* Her bones were closed in lede, and withyn that, bones were closed yn letter [leather]: *when it was opened there was a very swete smell came out of it.*"

V. Monast.
t. i. p. 525.
ad 529. Ad-
ditament. ad
t. i. ii. p. 884.

V. Hoveden,
f. 405. b. lin.
20 sub ann.
1191. ann.
pars poster.

P. 58. *A late ingenious French writer has very justly* BOOK II.
observed, that wearing such ensigns on their shields,
and appropriating them to distinguish particular fa-
milies, could not have been the general practice in
Europe till after the death of William the Conqueror:
for, if it had, his son Robert must have known him
by his armour, and could not have ignorantly thrown
him to the ground, as hath been related in the book
prefixed to this history.

To this observation I will add, that the laborious Herald, Mr. Sandford, says, in his Genealogical History of the Kings and Queens of England, that
 “ *Gules 2 Lions passant regardant* or are the arms
 “ assigned to William the Conqueror, as also to
 “ Robert duke of Normandy, King William the
 “ Second, and King Henry the First, derived (as
 “ *tradition tells us*) hereditarily from Rollo, the first
 “ duke of Normandy; who is said to have borne in
 “ his escocheon or shield the same charge, affect-
 “ ing, as several other Norman princes did, that
 “ Sovereign beast, *the lion.*” But then he adds,
 “ I term these arms *attributed or assigned*, because I
 “ cannot find, either by monuments, coins, seals, or
 “ any contemporary author, that such were in use
 “ with these several princes; but that following ages
 “ did assign or fix them upon the Norman line, to
 “ distinguish it from the succeeding Plantagenets,
 “ that did bear *Gules 3 Lions passant regardant* or
 “ (King Henry the Second, the first of that race,
 “ adding to the Norman arms the lion of Aquitaine
 “ of the same metal, in a field of that colour, in
 “ the right of Eleanor his wife, heir of that coun-
 “ try) and for this cause are they painted for the
 “ conqueror, upon the tomb of Queen Elizabeth,
 “ in Henry the Seventh’s chapel at Westminster,
 “ *impaled* with those of Queen Maud of Flanders
 “ his wife; arms *attributed* to the foresters and
 “ first

BOOK II. "first earls of Flanders to the time of Robert the Frison: and the arms also of King Henry the First, *impaling* them of Queen Maud of Scotland: *when indeed impalements were not known before the time of Henry the Third, if so soon; as I shall prove in its proper place.*" Yet the same author shews, that *devices* were used in the time of the conqueror, but *taken up and laid down at pleasure.* And says, "Tis *probable the reason why the shields of that age were left blanks, or of one simple colour or metal, was to receive the impress of every fancy, that either pleased the bearer or the painter.*"

P. 71, 72. *This seems to have been the constant support of the Navy: but upon extraordinary occasions danegeld was levied; and, although at the end of that century the name was lost, a like provision was often made, in every age, by our parliaments, for the defence of the British seas and security of the kingdom.*

Rot. Parl. 45 Edw. III. the commons pray, *that the franchises of the sea towns and havens may be allowed to them as heretofore; and say, that by default thereof the navy of England is much decayed,*" &c. These *franchises* were, the being discharged of armies and defence at land, and of all subsidies granted in parliament. But Mr. St. John, in his second day's argument for ship-money, observes, that these were for ordinary service: *bidage* and *danegeld* for extraordinary. Bracton speaks of *bidages* as not being feudal dues, but among those grants that were *de necessitate et ex communi consensu totius regni introducta.* Danegeld was a *bidage*, being laid upon hides of land. Fortescue says, that in his time (under Henry the Sixth and Edward the Fourth) the king had the subsidy of tonnage and poundage for

V. Bracton,
l. ii. p. 37.

See Fortescue
of absolute
and limited
Monarchy,
p. 44. c. 6.

for the keeping of the sea, and that it ought to be BOOK II.
 applied to no other purpose.

P. 83. *A knight's-fee seems to have been usually composed in those days of two hides of land, or of two hides and a half.*

Sir Henry Spelman says, "that the Normans
 " changed the name of a hide of land, and called Treatise on Feuds and Tenures, c. 27.
 " it *carue*, a *ploughland*; and, as it seemeth, in
 " erecting and laying forth their knights-fees,
 " assigned ordinarily two *carues* or *ploughlands* to a
 " knight's-fee. For 'tis noted out of the *Black*
 " *register* of St. Edmond's-bury, that William the
 " Conqueror gave to Baldwin, then abbot there,
 " eighty ploughlands, from which he might consti-
 " tute forty knights-fees, *octoginta carucatas terræ,*
 " *unde feodaret quadraginta milites.*" But it appears V. Madox Hist. of the Excheq. c. 15. p. 400.
 from the rolls in the reign of Henry the Second,
 that two knights held five hides of the bishop of
 Chichester for two knights-fees, and ten hides had
 been taken from the demesne of that fee, to enfeoff
 four knights, soon after the Norman conquest. By
 the Red Book of the Exchequer it appears, that in
 Henry the Second's reign a distinction was made be-
 tween knights-fees of *the old* and of *the new feoff-*
ment. The latter were those that had been granted V. Mag. Rot. 14 Hen. II. Rot. 6. de auxilio Matildæ filie regis.
 after the death of Henry the First; and some of
 them, being smaller than the former, paid only
 twelve shillings for scutage, when the former paid
 twenty. But others of them were charged at the Earl of Warwick and William de Albini.
 same rate to those payments, and must therefore have
 been nearly of the same value. I likewise observe in
 the rolls, that several barons, who had fees of *the old*
feoffment, were also possessors of some of *the new*
feoffment; and, upon the whole, I see no reason to
 believe, that a *distinct and inferior order of barons*
 was

BOOK II. was constituted by these tenures, as some have
 thought.

P. 83. Sir H. Spelman says, that a *mesne* tenant, who had more than a single knight's-fee, was called a vavasor, which, he thinks, was a degree above knights: yet we generally find that name applied to any vassal, who held a military fief of a tenant in chief of the crown.

Many proofs might be given of this from books and records of that age. Mr. Selden says, in his Titles of Honor, part II. c. v. sect. xvii. "There were two kinds of knights-fees (as to this day also there are); those that were held in chief of the king; and those that were held by a mesne tenure, called also anciently *vavasories*. Of the first kind only, these baronies (as also the baronies or honors of earls) were made; and they, by *subinfeudation* for the most part, made the second. And by themselves and others provided at their own charge, or by their tenants (whom they made by such subinfeudation), they performed the services reserved by the king. As, if the king gave twenty knights-fees to be held in chief, or lands to be held by the service of twenty knights or men at arms (which was the same kind of gift), if the *patentee* infeoffed others of part to be held under him (for example) by the service of fifteen knights, then the king was served, at the charge of his baron the *patentee*, with five knights; and the other fifteen were supplied by those that held the rest by mesne tenures; yet so, that, if they failed in their service, the baron was to pay *escuage*, according to their number, to the king, and to have his like remedy against them." Concerning *escuage* much is said in other places of this work; but I would

would observe here, that, in using the word *paten-*
tee, Mr. Selden could not mean, that, in the times BOOK II.
 when this military policy was established, there were
 any barons *by patent*, but it is significant of the
 terms on which the lands were granted.

P. 84. *But these instances were extraordinary; the far
 greater number of the military tenants in chief having
 many subvassals.*

The learned Mr. Justice Wright has well observ-
 ed, in his Introduction to the law of tenures, that,
 since it is clear that subinfeudations were warranted
 by the feudal law, and that they were an original
 and necessary branch of the feudal policy itself,
 the doubt whether the king's tenants had a liberty
 of disposing of any of their lands to hold of them-
 selves could not be very ancient: and he argues
 strongly to shew, that the first commencement of it
 was not earlier than the time of Henry the Third,
 from the statute 34 Edw. III. cap. 15. which makes
 good all such alienations (or subinfeudations) made
 by those who held of the king's great grandfather,
 or of other kings before him, expressly saving his
 prerogative of the time of his grandfather, father,
 and of his own time.

It will be well worth the reader's while to see all
 that is said by the abovementioned writer concern-
 ing the restraint laid by Magna Charta, c. 32. on
 the practice of alienating so much of a fief, as not
 to leave enough for the performance of the service
 due to the lord from his vassal, and afterwards by
 the statutes, *Quia emptores terrarum*, and *De prero-
 gativa regis*. I will only observe, that, though the
 power of *subinfeudation* seems to have been conso-
 nant to the original policy of fiefs, without any
 distinction between those who held of the king, or
 of

BOOK II.

of other inferior lords, yet the limitation of it, in all cases, within the bounds prescribed in those laws, for the security of the service on which the tenure was founded, appears also to have been a necessary and inherent condition of all such grants, the departure from which, if not checked, would have been finally destructive to the whole feudal system.

P. 86. *But, in the case of invasions, the common law of the land continued undoubtedly to oblige, not only those tenants, but all the other freeholders, to assist in repelling and driving out the invaders.*

The limitation expressed in the statute of 1 Edw. III. viz. *that no man be compelled to go out of his shire, but where necessity warranteth, and sudden coming of strange enemies into the realm*, I take to have been always the law of England. The statute concludes with a reference to the ancient practice of that law. *And then it shall be done as hath been used in times past for the defence of the realm.* The first clause of the same act, viz. *The king wills that no man from henceforth shall be charged to arm himself otherwise than he was wont in the time of his progenitors, kings of England*, refers also to ancient usage, and to the assise of arms in the reign of King Henry the Second, which is again referred to and confirmed by the statute at Winchester in the 13 Edw. I. c. vi.

Ibid. *During the government of the Saxons (if we may believe what is said by the compiler of some laws ascribed to Edward the Confessor) the militia of every county was commanded by an annual officer called Heretoch, who was chosen into that office by all the freeholders, in the folk-mote or county court.*

The authority of that collection of laws, in **BOOK II.** which this passage occurs, I think indeed very slight; but what makes me believe, that the compiler of it did not err in this point, is its agreement with the ancient German laws, which Sir H. Spelman takes notice of, and seems on that account to consider it as authentick.

V. Gloss.
p. 288. De
HERETO-
CHIIIS.

Ibid. Sir H. Spelman supposes, that, after the Normans came in, this command devolved to the earl. And there is great reason to think, that the military power of every county was principally in the earl, during the times of which I write, though it was occasionally exercised by the sheriff or viscount.

Spelman's words here referred to are in his Glossary under COMES, "Quo edoctus exemplo
"Gulielmus I, novi utique apud Anglos regni
"fundamenta ponens, commilitones suos feudali-
"bus exornavit dignitatibus, forte etiam auctiori-
"bus quam ævo Saxonum. Nam cessasse jam vide-
"tur munus Heretochi comitatus in manu ipsius
"comitis." That the earls had the chief command of the militia of the county in the reign of William the First, and till after the decease of Henry the Second, appears, I think, from many clear historical proofs: and in all the accounts of those times I meet with no trace of any officer elected to such a command.

P. 87. *But, whether even the Saxon Heretoch was not subordinate to the earl in his military functions, appears to me very doubtful.*

Several reasons induce me to this doubt, and among others this passage in Florence of Worcester, V. Fl. Wig. sub ann. 1034
"Talia geri in suo comitatu Godwinus graviter
"ferens, nimiaque commotus ira, de toto suo comi-
"tatu,

BOOK II.

“*tatu*, scilicet de Cantiâ, &c. et filius ejus primogenitus Swanus *de suo*, &c. alterque filius Haraldus *de suo*, &c. innumerabilem congregaverunt exercitum.” From hence it should seem, that the power of the earls over the military force, in their several counties, was, in the Saxon times, superior to that of the *Heretoch* elected by the people. Perhaps that officer was no more than lieutenant under the earl. But indeed (to use the words of the learned Mr. Selden) “most parts of the state of the Saxon government are so obscure, that we can see only steps or torn reliques of them, rather than so much as might give a full satisfaction.”

Titles of
Honor, c. 5.
part ii.

P. 90. *Archers were drawn from the yeomanry, and seem to have served on foot, as attendants on the vassals who held by knights-service, and at their charge; or, sometimes, under the pay and at the charge of the king.*

See Cotton's
abridgment
of the records
in the Tower,
p. 21. 13 E.
III. & p. 281.
7 R. II.

I read of no archers on horseback in the age of which I write, unless they were comprehended under the term *servientes*, some of which were light horsemen: but in Edward the Third's reign mention is made, in a roll of parliament, of two hundred archers on horseback; and, in the seventh year of Richard the Second, the bishop of Norwich offered to serve the king abroad with 3000 men at arms, and 2500 archers, *well horsed and appointed*. And when Lionel earl of Clarence went with an army into Ireland, he carried with him thither many archers on horseback, whose pay was six-pence a man *per diem*, the squires in the same army being rated at one shilling a man *per diem*, the knights at two shillings, and the bannerets at four shillings. There were likewise some archers at four-pence *per diem*, who, I presume, served on foot. The earl
of

of Ormonde had under him, besides his knights and squires, twenty *bobiers* armed, and twenty not armed; the pay of the former being six-pence a piece *per diem*, and of the latter four-pence. These *boblers* were Irish horsemen, so called because they served on *bobbies*. How much the strength of the nation was then thought to depend on the skill and valour of its archers appears from a letter of the duke of Guelderland to King Richard the Second, in which he uses this expression, "The tried valour of your people, and the sharpness of their victorious arrows, have so far advanced the fame of your magnanimous nation above any of the West, that terror and dread cannot but seize your adversaries." In Henry the Sixth's reign, the commons granted to the king *twenty thousand archers* for half a year in his service. And Fortescue says, in his treatise of absolute and limited monarchy, written in the reign of Edward the Fourth, *that the might of the realm of England most standeth upon archers.* Ibid. p. 560.
31 H. VI.
C. 12.

P. 92. *Father Daniel observes, that this establishment passed from the demesne of the kings of France into those of his greatest vassals, the dukes of Burgundy, the dukes of Normandy, and several others.*

It must not from hence be supposed (as it has been by some writers) that, till these privileges were granted by Louis le Gros, none had been enjoyed by any cities in France or Normandy. Odericus Vitalis takes notice, that, in the year eleven hundred and six, King Henry the First, being favorably received by the citizens of Rouen, *restored the ancient dignities of that city.* "Rex siquidem cum duce Rotomagum adiit, et à civibus favorabiliter

BOOK II.

Ibid. p. 788.
sub anno 1101.

“ vorabiliter acceptus paternas leges renovavit,
“ *pristinæque urbis dignitates restauravit.*” The same
author says of the same king, that, in a treaty with
his brother, the duke of Normandy, he retained
only the town and castle of Dumfront in that
dutchy, because he had promised the citizens upon
oath, that he would never separate them from his
demesnes, *nor change their laws and customs*: “ Quia
“ Damfrontanis, quando illum intrinseverunt, jure-
“ jurando pepigerat, quod nunquam eos de manu
“ sua projiceret, *nec leges eorum vel consuetudines*
“ *mutaret.*” These laws and customs must have
been *privileges* granted to the townsmen, which
others did not enjoy; as they were so desirous to
prevent their being changed. The enfranchise-
ments of *serfs* in towns, and the establishing therein
of a new military power independant on the nobi-
lity, were indeed *innovations*, which took their rise
from the institutions of Louis le Gros, and came
from France into Normandy, and even into Eng-
land. Some corporations, which did not before exist,
might be also *created* at that time; but many others,
I presume, were only *new-modelled*. This seems to
have been the case of the city of Rouen at still a
later period. For Duchesne has given us a charter,
which directs in what manner a mayor shall be
elected, and establishes other regulations for the go-
vernment of that city, but with a reference to the
constitution of a former community upon a different
model. It is without date, but seems to be from
Philip Augustus, by some of the terms therein used.
It is certain, that in England many cities and towns
were *bodies corporate* and *communities* long before
the alteration introduced into France by the charters
of Louis le Gros.

See Duchesne
H. Norm.
p. 1066.

P. 94. *But these the courses of elder times were* BOOK II.
about this time much altered; and the king for the
most part was supplied in his wars by contract with
the nobility and gentry, to serve him with so many
men, and so long, and at such a rate, as he and
they by indenture accorded.

Sir Robert Cotton seems to date this alteration from the reign of Richard the Second; but we find, by the records of parliament, that, in the thirteenth year of Edward the Third, seven thousand four hundred men at arms, two hundred archers on horseback, and two thousand halberdiers, were set out by certain nobles of the counties of York, Nottingham, Derby, Lancaster, and Cumberland, by particular rate: See Cotton's
abridgement
of the records
in the Tower,
p. 11.
13 E. III.

Ibid. Indeed the practice varied much in different ages; though it is plain, from our law-books, that the principle of knight-service, due, by the nature of the feudal policy, from all the possessors of military tenures, remained much the same, from the reign of William the First to that of Henry the Seventh; nay, even till Charles the Second abolished those tenures.

Among the variations from the custom of the ancient feudal tenures we may reckon a clause in a statute of the eighteenth of Edward the Third, which says, that men of arms, hoblers, and archers, *chosen* to go in the king's service out of England, shall be *at the king's wages*, from the day that they depart out of the counties *where they were chosen*, till they return. These, I apprehend, were not men who served on the ancient plan, according to the duty of their tenures, but were raised by the new practice of agreements and covenants between the king and his barons, or tenants in chief by knight.

BOOK II. knight-service, and picked from the several counties. They were not therefore bound, as under the ancient establishment, to serve forty days at their own charges. Yet no changes in the mode produced any in the nature of feudal military service, on which foundation and principle all these contracts were made. By the act of the twenty-fifth of Edward the Third, "it is accorded and assented, *"that no man shall be constrained to find men of arms, hoblers, or archers, other than those which hold by such services, if it be not by common assent and grant made in parliament:"* which is confirmed by a statute of the fourth of Henry the Fourth, with the following proviso, "so that the lords, nor any other, that have lands or possessions of the country of Wales, or in the marches thereof, *shall in no wise be excused of their service and devoirs, due of their said lands and possessions, nor of any other devoirs or things, whereto they or any of them be bound to our lord the king; though that the same lords and other have other lands and possessions within the realm of England. And that the lords, or other, of what estate or condition that they be, which hold by escuage, or other service due to the king, any lands or possessions within the said realm, be in no wise excused to do their services and devoirs, due of their said lands or possessions. And that the lords, knights, esquires, nor other persons, of what estate or condition they be, which hold and have of the grant, or confirmation of our lord the king, lands, possessions, fees, annuities, pensions, or other yearly profits, be not excused to do their service to our lord the king in such manner as they are bounden because of the said lands," &c. which was not repealed till the act of the twelfth of Charles the Second.*

P. 100. *The treatise ascribed to Glanville, &c. tells* BOOK II.
us, that the relief of a knight's-fee was then fixed
at a hundred shillings, and of lands held in soccage
at a year's value, by the custom of the kingdom;
but that, with regard to baronies and to serjeanties,
there was no determinate rule of law, those who
held by such tenures satisfying the king, for the re-
lief due to him from them, at his discretion.

This disagrees with the charter of Henry the First, which Henry the Second has confirmed: for there it is said, that, upon the death of a baron, or any other tenant who held in chief of the crown, his heir shall not *redeem* his land, as had been done in the reign of William the Second, but shall only pay *a just and lawful relief*; words which evidently imply a known rule of law to direct and ascertain the payment. It is likewise declared, in the most authentic original manuscripts of King John's *Magna Charta*, that one hundred pounds shall be paid, on the death of a baron, by the heir, *as the ancient relief*. We also find, by the Norman law-book called *Le Coutumier*, that this was agreeable to the practice in Normandy, from whence these feudal payments were derived to the English. How then did it happen, that, with regard to the reliefs of baronies and of serjeanties, the course of law, in the reign of Henry the Second, was different from that practice, and from the charter of his grandfather, which he had confirmed?

The best solution I can give of this difficulty is suggested to me by observing, that, from the records which Mr. Madox has given us in his History of the Exchequer, it seems that Henry the Second took no more for any barony than one hundred *marks*, which, being less than the relief referred to in the charter, the barons could have no reason to complain of his departing from that rule in this point.

See this charter in the Appendix to the first volume.

See the charter in Blackstone's edit. from the Cotton and Durham manuscripts. V. Coutum. de Norm.

See Hist. of the Excheq. c. 10.

See p. 213.

BOOK II. Another reason, which is mentioned in another part of this book, might induce them to leave it discretionary in the crown, so long as that discretion was favorably used. But the abuse, that was made of their confidence by King John, may have obliged them to deny it to him and his successors. For many other instances are to be found in the history of the English Constitution, that ancient laws, or customs, which, in the reigns of good princes, had given way to beneficent acts of prerogative, have been claimed and restored, in after-times, as necessary bulwarks to the people against oppression.

See Pine's Engraving and Magna Charta Johan. in Dr. Blackstone's edition.

See also Tyrrel's Appendix to his third volume.

The words of King John's charter, as they stand in the two Cottonian manuscripts and in that of the church of Sarum, by which Mr. Tyrrel corrected Matthew Paris's copy, are these: "Siquis comi-

"tum vel baronum nostrorum, sive aliorum tenen-
 "tium de nobis in capite per servitium militare,
 "mortuus fuerit, et cum decesserit hæres suus
 "plenæ ætatis fuerit, et relevium debeat, habeat
 "hæreditatem suam *per antiquum relevium*; scilicet,
 "hæres vel hæredes comitis, de baronia co-
 "mitis integra, per centum *libras*; hæres vel hæ-
 "redes baronis, de baronia integra, per centum
 "*libras*; hæres vel hæredes militis, de feodo mili-
 "tis integro, per centum solidos *ad plus*; et qui
 "minus debuerit, minus det secundum antiquam
 "consuetudinem feodorum." The two Cottonian

manuscripts are the only originals of this charter now extant, that of Sarum being missing. But the copy of it, which is entered in the Red Book of the Exchequer, agrees with these, only instead of *libras* it has *libram* in the section concerning the relief for a barony; which is plainly an error. The charter of the first year of Henry the Third, which Dr. Blackstone has printed from the only original extant, viz. that in the archives of the cathedral at

Durham;

Durham, agrees entirely with King John's in the clause here recited; and so does the entry of it in the Red Book of the Exchequer at Dublin, only that, instead of the words *de baronia integra*, it has *de baronia baronis integra*; but the relief is the same, viz. *centum libras*.

The second charter of Henry the Third, granted in the year 1217, which Dr. Blackstone has printed from the original in the Bodleian library, the only one extant, has the same clause word for word; and so has the Talbot manuscript, from which Dr. Blackstone has published the charter of the ninth year of that king, and also the Durham manuscript, which the Doctor calls *an original of inestimable value*. But the entry made in the ancient book at Guildhall, of the charter of the year 1217, instead of *libras* has *marcas*, in the section which relates to the relief of a barony; and the same reading is found in all the charters of *inspeximus* of the twenty-fifth and twenty-eighth of Edward the First, which have been collated by Dr. Blackstone with the Talbot manuscript of the charter of the ninth year of Henry the Third, and also with that of Durham. What gives some authority to this alteration of pounds to marks, is a record which Mr. Madox has cited, and by which it appears, that, in the thirty-fifth year of king Edward the First, John de Ratynden, cousin and heir of Alice Mucegrofs, paid xli. iis. iiii. ob. q. relief, for all the lands which Alice held of the king *in capite*, viz. for the sixth part of the barony which Hugh Dyve formerly held. In the twenty-first year of king Edward I, Alice was charged with xxv marks relief for the said sixth part of a barony; the relief for a whole barony being then charged at *one hundred pounds*. But now, by the *Magna Carta regis de libertatibus Anglie* (which charter the king by his writ, *quod est inter communia de*

See these charters in Blackstone's edition.

Hist. of the Exchequer; c. x. p. 220.

BOOK II.

See Titles of
Honour, c. v.
par. ii. sect. 11.

anno xxix, commands to be observed in all points), the king would take but one hundred *marks* for the relief of a barony: and therefore John de Ratynden is charged for the same portion of the said barony at the rate of a hundred *marks, et non de tanta summa pecuniæ*, as Alice was charged at, viz. a hundred pounds. Mr. Selden also cites, in his *Titles of Honour*, a roll of the sixth year of Edward the Third, by which it appears, that, in the twelfth year of Edward the First, Humfrey de Bohun was charged with fifty marks for a third part of the fiefs which had belonged to Ada de Portu, and with fifty marks for a third part of the honor of Breghtonoc, which was a greater sum than was paid by John de Bohun to Edward the Third, "*eo quod relevium prædictum oneratum fuit tanquam pro tertia parte prædictarum baroniarum ante consecutionem Magnæ Cartæ de libertatibus Angliæ, quo tempore relevium pro baronia assessum fuit ad c libras, et post consecutionem ejusdem Cartæ ad c marcas tantum, juxta quarum c marcarum ratam prædictus Johannes de Bohun oneratur superius de relevio dicti avi sui pro partibus dictarum baroniarum, &c.*" In this record the words *ante et post consecutionem Magnæ Cartæ de libertatibus Angliæ*, can mean nothing but *before and after the confirmation of the great charter of Henry the Third*, which (as it is expressed in the other record cited by Mr. Madox) the king, by his writ, *quod est inter communia de anno xxix*, commands to be observed in all points. For by this record it appears that in the twelfth, and by the other that in the twenty-first year of Edward the First, the relief for a barony was a hundred pounds. The alteration therefore was made by the charters of *inspeximus*; but how they came to vary from the original charter of the ninth of Henry the Third, so much to the prejudice of the

the

the royal revenue, it is hard to conceive. On the other hand, many reasons forbid one to suppose that it stood so in that charter. For, besides that the two original manuscripts, cited before, have it *libras*, the same reading is found in the authentick entry of it in the Red Book of the Exchequer at Westminster: and it likewise appears by the rolls, that in the very year when the said charter was granted, viz. the ninth of Henry the Third, Walter de Clyfford was charged with a hundred pounds for his relief *as for a barony*. I have shewn before, that the authentick transcripts of all the former charters have *libras*, not *marcas*. And if in King John's time the *ancient relief* was a hundred pounds, it was so in Henry the Third's and Edward the First's. But further, it is evident by the great roll of the tenth year of Richard the First, that a hundred pounds was then thought the *reasonable relief* for a barony. Edward the First must have been therefore deceived in this matter by those who made the charters of *inspeximus* for him. There being no stops in the manuscripts, it is hard to determine, whether the words *ad plus* after *centum solidos* relate only to *them*, or to the preceding reliefs of earldoms and baronies in the same clause; but I rather think that they only belong to the *centum solidos*.

By the laws of William the Conqueror, the reliefs of earls, barons, and vassals, are to be only their horses and arms, like the *Heriots* of the Saxons: which seems to have been enjoined by that prince to accommodate the Norman custom in this respect to the Saxon; forasmuch, as many of those laws are Edward the Confessor's revived and confirmed. But it is observable, that the number of horses and arms required thereby as the lawful relief for an earl, is double to that for a baron, and that for a baron is

See Madox's
Hist. of the
Exchequer,
c. x. p. 218.

See Ingulph.
and Wilkins
Leg. Gul.
Conq. p. 22,
23, 24.

double

BOOK II. double to a vavasor's: whereas it has been shewn, that the charters make the relief for a baron the same with that for an earl (or but a third less, even if we read *marks* instead of *pounds*), and allow no more than a hundred shillings for any knight's-fee, which falls very short of one half of the baron's relief. I therefore presume that those laws were repealed, and that *the just. and lawful relief* in the charter of Henry the First did not refer to what they had established, but to the Norman relief, which was the same as the subsequent charters declare.

C. L. p. 220.

Mr. Madox takes notice, in his History of the Exchequer, that although baronies differed much in the number of fees whereof they consisted, the relief of each was the same: which proves, that it could not be a fourth part of the value of the annual income arising out of the barony; as some have supposed.

According to the author of the Dialogue de Scaccario, the relief of a hundred shillings was only fixed in his time (under King Henry the Second) for knights-fees held of the barons, or escheated to the king; not for those that were immediately held of the crown. But no such distinction is made by Glanville; and in the charters of King John and Henry the Third it is said, " that the heir or heirs

See the charters of Blackstone's edition.

" of an entire knight's-fee, *which was held in chief*
 " *of the king*, should pay *the ancient relief*, which
 " *was but a hundred shillings at most*, and that he
 " who owed less should pay less, *according to the*
 " *ancient custom of fiefs.*"

P. 107. He tells us, also, that it was a duty incumbent on the lord, to offer a proper match to a female ward in his custody, as soon as she was of an age to marry, and also to pay her a reasonable portion.

tion. These regulations, and the profit given, by a **BOOK II.**
feudal custom in these times, to the king and inferior lords, on the marriage of their vassals, conduced to promote propagation, and the encrease of the people; for it is probable that few remained long unmarried.

The duty of the lord to offer a proper match to a female ward in his custody is enforced by the statute of Westminster, in the third of Edward the First, c. 22. which says, *that if the lord, to whom the marriage belongeth, will not marry heirs female, after they have accomplished the age of fourteen years, but for covetise of the land will keep them unmarried, he shall not keep, by reason of marriage, the lands of such heirs female more than two years after the term of the said fourteen years. And if he do not marry them within the said two years, then shall they have an action to recover their inheritance quite, without giving any thing for their wardship or their marriage. And if they, of malice, or by evil counsel, will not be married by their chief lords (where they shall not be disparaged) then their lords may hold their land and inheritance until they have accomplished the age of an heir male, to wit, of one and twenty years, and further, until they have taken the value of the marriage.* The foundation of this power, given to the lords of heirs female refusing to marry, where no disparagement would ensue, was the profit that such lords would have made of their marriage; and the reason of allowing such profit was the loss sustained by their lords in giving up their lands, on the marriage of the wards, before the wardship was determined. With regard to heirs male, it had before been declared by C. vii. the statute of Merton, “that if an heir (of what age soever he be) will not marry at the request of his lord, he shall not be compelled thereunto; but when he cometh to full age, he shall give to his lord and pay him as much as any would have given

BOOK II.

“ *given him for the marriage before the receipt of his land; and that, whether he will marry himself or not: for the marriage of him that is within age of mere right pertaineth to the lord of the fee.*”

C. vi.

The same statute also said, “ that if an heir, being fourteen years old, or above, unto his full age, should marry without licence of his lord, *to defraud him of the marriage*, and his lord offer him reasonable and convenient marriage, without disparagement, then his lord shall hold his land beyond the term of his age, that is to say, of one and twenty years, *so long that he may receive the double value of the marriage after the estimation of lawful men, or after as it hath been offered before, without fraud or collusion, and after as it may be proved in the king's court.*”

From hence it is evident, that what may be concluded, from the silence of Glanville, *not to have been law* in the reign of Henry the Second, was now become law, namely, *that the marriage of a male ward, within age, of mere right pertaineth to the lord of the fee*; and was so far considered as a profit due to him, that, although he could not compel his ward to marry, yet he might demand as much as any one would have given him for the marriage, and the ward was to pay it to him, *whether he married or not*. It appears also, that, when the statute of Merton was made, the value of such marriage might be legally estimated; and it was declared, that the penalty of defrauding the lord thereof, by a marriage without his consent, if a reasonable and convenient one was offered by him, should be double that value. But if a female heir was married, though with her father's consent without that of her lord, the penalty was a forfeiture of the whole fief for ever, *secundum jus et consuetudinem regni*, says Glanville,

Glanville, l. vii. c. 12. which still continued to be BOOK II.
law under Henry the Third.

Ibid. Glanville takes notice of only three kinds of aids, which the feudal lord had a right to demand from his vassals, &c.

There is a remarkable conformity between the ideas of ancient Rome, on the reciprocal duties of *patrons* and *clients*, and those of the feudal law on the reciprocal duties of *lords* and *vassals*. I cannot better shew this than by repeating the words of the learned Dr. Chapman, in his Essay on the Roman senate. He says that, by the institutions of that ^{P. 10, 11.} commonwealth, "the patrons were obliged to assist
" their clients *gratis* with their advice and credit
" upon all occasions, and defend their persons and
" properties in all civil and criminal prosecutions;
" in return for which, the clients were directed to
" contribute to the fortunes of their patron's daughters, if their own circumstances did not enable
" them to marry them suitable to their birth; to
" their ransom, or that of their children, who happened to be taken by the enemy; to the payment of any fines, or costs of suit, they might
" be cast in; or the expence incurred by canvassing
" for any public office." Agreeable to these in a great degree are the obligations of *defence*, *protection*, and *warranty*, on the part of the feudal lords, and the *aids* mentioned by Glanville in the passage referred to above, together with the *aid of ransom*, on the part of the feudal vassals. Yet it must be observed, that the whole system of feudal duties arose from the tenure of lands; whereas those established between the Roman patrons and their clients were neither founded upon any territorial connexion, nor were they of a military nature, as all feuds originally were; nor was any jurisdiction inherent in
the

BOOK II. the patrons over their clients, as in the feudal lords over their vassals; nor was any oath of fealty due from the clients to their patrons, as from the feudal vassals to their lords. On which accounts the learned Craig has justly rejected the notion of the policy of feuds being derived from these institutions.

V. Craig, De
Jur. Feudali,
l. i. tit. 5. c. 6.

Chap. des
prises des
avres.

P. 108. *Another was to contribute towards his expence in making his eldest son a knight, &c.*

According to Britton, no lord could demand this aid of his tenant, if he were not himself a knight.

P. 110. *Which ceremonies denoted (according to Bracton) on the part of the lord, protection, defence, and warranty; &c.*

See Wright on
Tenures, p.
153, 154.

Warranty signified an obligation on the feoffer to warrant the seisin or possession of the feoffee in his land: or, if he could not maintain it, to make him satisfaction by rendering to the value of the fee if it was evicted.

P. 111. *After the vassal had said this, he was to receive a kiss from his lord, and then rising up was to take the oath of fealty in the following words: "Hear this, my lord," &c.*

Lord Hale says, in his History of the Pleas of the Crown, c. x. p. 62, 63. "The oath of fidelity or fealty is of two kinds, that which is due by tenure, whether of the king or mesne lords, which is *ratione feodi vel vassallagii*, and hath a special relation to the lands so held, and is set down by Littleton, c. 19. *Hear you, my Lord, &c.* Touching this feudal fealty, or fealty by reason of tenure, I have not much to do in this place. The other kind of fealty is that oath, which is called

" called *fidelitas ligea*, or *allegiance*, and performed BOOK II.
 " only to a sovereign prince, and therefore regu-
 " larly ought to be performed by all men above
 " the age of twelve years, whether they hold any
 " lands or not. The tenor of this oath, according
 " to Fleta, l. iii. c. 16. sect. 22. runs thus: *Hoc*
 " *auditis, circumstantes, quod fidem regi portabo de*
 " *vita et membris, et terreno honore, et arma contra*
 " *ipsum non portabo: Sic me Deus*" &c. Thus Lord
 Hale—but I would observe hereupon, that I find
 no proof that the words *et arma contra ipsum non*
portabo were in any oath of allegiance till after the
 times of King Henry the Second. His lordship
 goes on, " According to Britton, who wrote about
 " the fifth of Edward the First, c. 29. (which is
 " also mentioned in Calvin's case, 7 Co. Rep. 6.)
 " the common form of the oath of allegiance taken
 " in Leets, runs thus: *Ceo oyez vous, N. bailife, que*
 " *jeo A de ceo jour en avant ferray feal et leal a notre*
 " *seigniour E. roy d' Angleterre et a ses beires, et soy*
 " *et lealte luy porterai de vie et de membre, et de ter-*
 " *rein honour, et que jeo lour mal ne lour damage ne*
 " *saverai ne ovray, que jeo ne le defendray a mon*
 " *poier: si moy ayde dieu et ses saynts.* This is the
 " form of the ancient oath of allegiance or fidelity
 " to the king, and as it is used at this day, &c. It
 " is comprehensive of the whole duty of a subject
 " to his prince, and therefore hath obtained for
 " above six hundred years in this kingdom." For
 the better explaining of the difference between the
 two kinds of fealty, I will suppose, that, in the
 times when the feudal law was in its vigour, a sub-
 ject of England, who had held a fief of the king,
 should, by some offence or defect of his duty as a
 vassal, have incurred a forfeiture of that fief, and
 have actually lost it; in that case, it is evident, the
 feudal connexion between him and his sovereign
 would

BOOK II. would have ceased and determined; but he would still have been under the bond of fealty and allegiance, which he owed to the king as his subject.

P. 112. *Homage done to the king was called lige bomage, &c.*

I do not mean to assert (as some very eminent writers on feuds have done), that there was no other *lige bomage* than what was done to the king. For the contrary appears by many ancient records, particularly by the charter containing the agreement between King Stephen and Henry Plantagenet, then duke of Normandy, in which it is said by the former, "Comites etiam et barones mei *ligium bomagium* duci fecerunt, *salva mea fidelitate, quamdiu vixero et regnum tenebo.*" Which words also demonstrate that there might be a *reserve* or *saving* in lige homage. A late French historian mentions a charter, in which the Sire d'Apremont engages to do *lige bomage* to the king of France for his land of Briente sur Meuse, and promises to *serve him against all men, except the bishop of Metz.* The same author says, on the authority of the *Affizes of Jerusalem*, that, in the case of a war between two lige lords of the same vassal, such vassal was bound to aid and succour him to whom he first had engaged his allegiance, *because (say the Affises) he could not do homage to the second, but with a saving of his fealty to the first.*

Abbe Velli
Histo. de
France, t. vi.
p. 219. Louis
IX.

P. 114. *We are assured by contemporary writers of the greatest authority, that, in the reign of William the Conqueror, lige bomage was done, and fealty was sworn to that king, not only by his own immediate tenants, but all the considerable subvassals: &c.*

Ingulphus

Ingulphus says, "Reversusque in Angliam (Rex BOOK II.
 "Wilhelmus scilicet) apud Londonias *hominium* P. 79.
 "sibi facere et contra omnes homines fidelitatem ju-
 "rare omnem Angliæ incolam imperans totam ter-
 "ram. descripsit," &c. What we are to under-
 stand by *omnem Angliæ incolam*, is explained by
 other historians. Florence of Worcester and Simeon V. Flor. Wig.
 of Durham say, "In hebdomadâ Pentecostes suum & S. Dunel.
 "filium Henric. ap. Westm. ubi curiam suam sub ann. 1086.
 "tenuit, armis militaribus honoravit. Nec multo
 "post mandavit ut archiepiscopi, episcopi, ab-
 "bates, comites, barones, cum suis militibus,
 "die cal. Aug. sibi occurrerint Saresburie. Quo
 "cum venissent, *militibus illorum sibi fidelitatem con-*
 "*tra omnes homines jurare coegit.*" And Hoveden V. Hoveden.
 has the same words; only, after *barones*, he adds Ann. sub
vice-comites. The Saxon chronicle also says, speak- ann. 1086.
 ing of the same assembly held at Salisbury, by Chron. Sax.
 William the First, "Ubi ei obviam venerunt ejus sub ann. 1085.
 "proceres, et omnes prædia tenentes, quotquot essent
 "notæ melioris per totam Angliam bujus viri servi
 "fuerunt, omnesque se illi subdidere, ejusque facti
 "sunt vassalli, ac ei fidelitatis juramentum præstite-
 "runt se contra alios quoscunque illi fidos futuros."
 Henry of Huntingdon says, "Wilhelmus rex for- V. Hunting.
 "tis, anno decimo nono regni sui, cum de more Hist. f. 212.
 "tenuisset curiam suam in natali apud Glocestre, sub ann. Wil.
 "ad Pascha apud Wincestre, ad Pentecosten apud I. 19.
 "Londoniam, Henricum filium suum juniorem
 "virilibus induit armis. Deinde accipiens *hominium*
 "omnium terrariorum Angliæ, cujuscunque feudi es-
 "sent, juramentum etiam fidelitatis recipere non distu-
 "lit." We are therefore to understand *omnem*
Angliæ incolam in Ingulphus to mean all the mili-
 tary tenants of the barons, and all the considerable
 landholders in England, of whatever lord they

BOOK II. held their fiefs. For, though Ingulphus mentions London as the place where this was done, and Henry of Huntingdon seems to confirm that account, I make no doubt it was at Salisbury, as is affirmed by the other historians abovementioned, and that he and Henry of Huntingdon have confounded that assembly with the *curia* held at London a little before.

Ibid. It also appears from the words of William of Malmſbury, that homage was done, and fealty sworn, to the heir apparent of the crown, in the reign of Henry the First, by all the freemen of England and Normandy, of whatever order or rank they were, and to whatever lord they were vassals.

W. Malmſb.
de H. I. l. v.
f. 93.

The words of Malmſbury are these: "*Filium habuit Rex Hen. ex Matilde, nomine Wilhel- mum, dulci spe et ingenti curâ in successionem educatum. et pervectum. Nam et ei, vix duobus XIII annorum esset, omnes liberi homines Angliæ et Normanniæ, cujuscunque ordinis et dignitatis, cujuscunque domini fideles, manibus et sacramento se dedere coacti sunt.*" Certainly these words, like the *omnem Angliæ incolam*, in the citation from Ingulphus given in the last note, must not be construed too literally, but mean the *omnes prædia tenentes, quodquot essent notæ melioris*, the most considerable landholders of every order and degree. For the numbers of the *liberi homines Angliæ et Normanniæ* were too great to be brought all together, in either country, without extreme inconvenience; and the performance of the ceremonies of doing homage, and swearing fealty, would have taken up too much time, and been too fatiguing to the prince who received it from them.

P. 115. *Glanville tells us, that women could take the oath of fealty, but could not do homage; and that, if they were married, their husbands were to do homage for them.* BOOK II.

Sir Thomas Littleton says, in his Book upon I. ii. sect. 87. Tenures, "that if a woman sole shall do homage, she shall not say, *I become your woman*; for it is not fitting that a woman should say, *that she will become a woman to any man but her husband, when she is married*: but she shall say, *I do to you homage, and to you shall be faithful and true*," &c. Upon which Lord Coke remarks, "that when Glanville says, *a woman shall not do homage*, he is to be understood, that she shall not do *complete homage*." But I should rather believe, that, in Glanville's time, single women did none; and that the alteration in the form, which is mentioned by Littleton, was an expedient found afterwards, to avoid the objection of an indecency in their homage; as it was also in the case of ecclesiasticks. From the obligation laid on the husband to do homage for the wife, it naturally followed, that the barony of a wife, as well as every other fief requiring homage, was, in effect, made over to the husband; and therefore in those days many barons came to parliament in right of their wives, and by virtue of their marriage were accounted peers of the realm. It has been observed in this History, that the same notion extended to dukedoms and principalities in many parts of the continent.

P. 120. *And it was a general maxim of the feudal law, that a forfeiture of the property of the lord in the fief, and of all his dominion over his vassal, was as necessary an effect of any great breach or neglect*
Z. 2
of

BOOK II.

of the duty which he owed to the vassal, as a forfeiture of the fief was of a similar crime or neglect in the vassal.

The learned Craig, in his excellent book on the Feudal Law, has these words: "De dominorum autem offensâ hæc generalis regula observanda est; ubicunque vassallus ex suâ offensâ, sive delicto in dominium, feudo privatur, e regione dominus, si idem in vassallum deliquerit, directo dominio privatur, etiamsi dominus offensum commiserit antequam vassallus sive vassalli hæres juraverit, nisi forte jurare requisitus non juraverit." And then he enumerates several offences, which if the lord committed against the vassal, he was thereby deprived of his superiority or dominion over him.

V. Craig, de
Jure Feudal.
lib. iiii. tit. 6.
sect. 13.

Lord Coke, in his learned notes on the chapter concerning Homage in Littleton's Tenures, calls fealty and homage a *perpetual league between the lord and the tenant*. "And so firm and strong (says he) was this league, that by the ancient law of England, *Nil facere potest tenens quod vertatur domino ad exhereditationem vel etiam atrocem injuriam. Nec dominus tenenti e converso. Quod si fecerit, dissolvitur et extinguitur homagium omnino, et homagii connectio et obligatio, e: erit inde justum judicium cum venerit contra homagium et fidelitatis sacramentum, quod in eo in quo delinquant puniantur, sc. in personâ domini, quod amittat dominium, et in personâ tenentis, quod amittat tenementum.*"

V. Bracton
Fol. 80. Brit-
ton Fol. 174.

From hence arose the feudal term *to defy* (*diffidare*); that is, to declare the dissolution of the faith reciprocally pledged between the lord and the vassal. And thus we find, that, in the times when the

the feudal law was in its vigour, not only the vassals *defied* their lords, upon certain occasions, but the same ceremony was used by the lords to their vassals, nay even by the king himself.

For Matthew Paris says, that in the year 1233 King Henry the Third *defied* the Earl Mareschall. V. Mat. Paris, Hist. Ang. H. III. p. 388.

His words are these: "Et his ita gestis, rex de
" consilio episcopi Wintoniensis, *Marescallum diffi-*
" *davit per episcopum Menevensem*, et sic iussit con-

trā eum arma movere, et ejus castella obsidere." Nor can any thing better shew the opinion of that age concerning the right of resistance in the vassal against his lord, though that lord was the king himself,

than the account which the same author gives us of a discourse between the above-mentioned earl, and one sent from the king to expostulate with him, and shew that he ought to submit himself to the king's mercy. I will therefore transcribe here some passages from it, and add a few remarks. The messenger said, that he had heard several of the court declare, it was the duty of the mareschall to make

this submission, "*quia fecit injuriam domino suo, qui,*
" *antequam rex invaderet terram aut personam*
" *marescalli, ipse invasit terram domini regis, com-*
" *bussit, destruxit, et homines interfecit.*" Here the complaint of the earl's having committed an offence in taking up arms against the king is made to consist entirely in his being *the aggressor*. But he goes on to say, "Et si ille dicit, se hoc fecisse ad tutionem

corporis sui et hæreditatis suæ, dicunt quod non;
" quia in ipsius corpus et exhæredationem non fuit
" unquam aliquid machinatum. *Nec ob hoc tamen*
" *deberet prorumpere contra dominum suum, donec*
" *oculata fide cognosceret regem contra ipsum talia*
" *cogitare, et ex tunc liceret talia attemptare.*" In these words, the only limitation put to the right of the earl to defend his person or property against the

BOOK II. king is, that he ought not to break out into an open revolt, till he had ocular proof of the king's designing such things against him. His answer (as given us by Matthew Paris) was first to deny the charge of his being the aggressor: "*Non est verum, quia rex ipse, cum semper paratus essem stare juri et judicio parium meorum in curia sua, eo per internuntios plures pluries petii illud, quod ab ipso mihi semper extitit denegatum, terram meam violenter ingressus contra omnem justitiam invasit.*" He pleaded, that the king had denied his petition to be brought to a legal trial in the king's court by the judgment of his peers; and had, against all justice, invaded his lands; notwithstanding which, he had made peace with him to his own prejudice; but conditionally, that, if the king should not observe the articles of that peace, he should be free of homage to him, as he had been before: "*Quod ego essem extra homagium suum et diffiduciatus ab eo; sicut prius fui per dominum episcopum Menevensi.*" Wherefore, the king having broken most of the articles of the peace or agreement between them, and eagerly desiring to deprive him of his estate and liberty (as he could prove), he had a right to recover his own, and to weaken the king's power by all possible means: "*Unde cum fere in omnibus articulis in forma pacis deficeret, licuit mihi, juxta conventionem meam, quod meum erat recuperare et posse suum modis omnibus debilitare; maxime cum ad meam destructionem et exhereditationem et corporis captionem anhelaret: et hoc praesto certo didici, et, si necesse est, probare possum.*" He goes on to say, that soon after the peace, before he had taken arms to defend himself, the king had deprived him of his hereditary office of mareschall, without judgment of law, and refused to restore it to him; which shewed a determination to keep no peace

peace with him; for which reasons *he thought himself absolved from his homage by the king himself*, as he had been before their late agreement; and alledged, *that it was lawful for him to defend himself, and by all means to resist the malice of the king's counsellors:*

“ Et quod magis est, post pacem per dies quindecim, antequam Walliam intrarem, aut ab aliquo me defenderem, *sine judicio* spoliavit me ab officio Mareschalli, quod jure hæreditario ad me pertinet et possedi; nec aliquo modo ad illud me restituere voluit requisitus. Unde aperte didici, quod nullam pacem voluit mihi observare, cum post pacem deterius quam ante me pertractarat. Unde homo suus non fui, sed ab ipsius homagio per ipsum absolutus; cum ad primam dissidationem redirem, juxta dictam conventionem, ut prædictum est. Quapropter licuit et licet me defendere, et malitiæ consiliatorem suorum modis omnibus obviare.”

Being told of the great wealth and power of the king, which would enable that prince to bring against him more *foreigners* than he could procure to aid him, he answered, that the king was richer and more powerful than he, but less powerful than God, *in whose justice he trusted while he maintained and vindicated his own rights and those of the nation*: That he did not confide in *foreigners*, nor seek their confederacy; nor would he ask their assistance, if not compelled thereto by an unforeseen and immutable necessity: “ *Rex ditior me est et potentior: verum est. Sed non potentior est Deo, qui est ipsa justitia, in quam confido in conservatione et persecutione juris mei et regni. Nec confido in alienigenis, nec ipsorum appeto confederationem, nisi, quod absit, inopinata et immutabili fuero compulsus necessitate.*” And in answer to the charge brought against him by the king's counsellors,

V. Mat. Paris
Hist. Angl.
Hen. III.
p. 392.

BOOK II.

that, in hatred and to the damage of the king and kingdom, he had confederated himself with the king's enemies, particularly the French, the Scotch, and the Welsh, he denied the fact as to the French, and justified his confederacy with the King of Scotland and the prince of North-Wales, because they were, not enemies, but vassals to the king, till, by injuries which they had received from the king and his counsellors, they had been driven from their fealty (as he also had been) against their will, and by compulsion. For which reason he had confederated himself with them; that, being united together, they might better prosecute and defend their rights, of which they had been unjustly deprived, than they could being separate: "*Item proponunt*

V. Mat. Paris,
Hist. Angl.
H III, p. 393.

"*contra marescallum consilarii regis, quod confederatus est capitaneis inimicis ejus; videlicet Francigenis, Scotis, et Wallensibus, et videtur eis hoc fecisse in odium et damnum domini regis et regni. Ad hoc dicit marescallus, quod de Francigenis falsum est simpliciter. Quod dictum est de Scotis et Wallensibus, et (quod) videtur hoc fecisse in odium et damnum regis, similiter falsum est, præterquam de rege Scotiae et Leolino principe Northwallie, qui non inimici, sed fideles ejus fuerunt, quousque per injurias ipsius a rege et ejus consiliariis illatas a fidelitate sua inviti et coacti, sicut et ego, alienati sunt. Et propter hoc cum illis confederatus sum, ut melius simul, quam separati, jura nostra perquiramus et defendamus; a quibus injustè privati sumus, et in magna parte spoliati.*"

From hence it appears, that the law of England in those days allowed no confederacy of the vassals of the crown with any foreign power, unless in the case where a foreign king, or prince, being himself a vassal of the crown, was oppressed unjustly by the king, and forced to confederate himself with his

his con-vassals, for their mutual defence; which kind of association was deemed to be legal, and no treason against the king or kingdom. But I would observe, that this must have rendered it very dangerous for the king to have a foreign prince his vassal, particularly one who was so near a neighbour to him as the king of Scotland. BOOK II.

I shall conclude my citations from this very remarkable part of M. Paris's History with some words of the Earl Marefchall; which shew that he thought it not only *lawful*, but a *duty*, to resist the invasion of his rights by the king.

"Nec hoc esset honor regis, quod voluntati suæ con- *Ibidem,*
sentirem quæ non esset ratione subnixa: imo, facerem *P. 392.*
sibi injuriam et justitiæ, quam ipse in subditos exer-
cere debet et conservare. Et malum exemplum darem
omnibus, videlicet deserendi justitiæ et juris perse-
quutionem, propter voluntatem erroneam, contra om-
nem justitiæ, et (in) injuriam subditorum. Nam
ex hoc appareret, nos diligere plus possessiones nostras
mundanas, quam ipsam justitiæ."

P. 130. Yet it must be understood, that the honor, or barony, so created by the crown, or so delivered back again out of the hands of the king, was annexed to certain lands, which were composed of knights-fees, and held of the crown by knight-service.

That baronies of England, distinct from grand- V. Baroniam,
 serjeanties, were all territorial till long after the C. i. P. 17, 18.
 times of which I write, cannot be disputed. "But
 " (to use the words of Mr. Madox) it is to be
 " remembered, that a city or town could not be
 " the head of a barony. When a town was part
 " of a barony, it was only part of the demesnes of
 " a barony. But if there was a castle there, the
 " castle was usually the head of the barony. For
 " example, the town of Richmond in Yorkshire was
 " part

BOOK II. "part of the demesne of the honor of Richmond :
 "but the castle was the *caput honoris*."

To which I will add, that anciently Arundel Castle seems to have been the head of the barony annexed to the earldom of Suffex; for which reason the earls of Suffex were called earls of Arundel.

C. v. sect. 17. Mr. Selden says, in his Titles of Honor, "But otherwise (saving in this case where grand-serjeanty was alone reserved) the baronies, as I conceive, consisted of such knights-fees as we have yet spoken of, but not of any certain number of them. And the chief seats of the barons in any part of those fees were called *capita baronum*." It was not therefore necessary that the head of a barony should be a castle; but, when there was a castle upon a barony, that was deemed the head of it in the common usage of those times.

Ibid. Besides the military service, which every baron was obliged to, in virtue of his fief, he was also bound to attend the king in his parliament and supreme court of justice, to assist in his judgements, and give him faithful counsel in all matters concerning the dignity of his crown and the good of his realm.

Lord Burleigh says, in one of his Letters, that nobility was nothing else but ancient wealth in a family. By this he meant, that nobility was in ancient times territorial, and annex to the possession of hereditary lands. Monsieur Voltaire, in his additions to his General History, after observing that at Venice, and in the ancient republicks of Italy, nobility was attached to dignity, to employment, and not to lands, says, "that every where else nobility became the right of possessors of land. The Herren in Germany, the Ricos Hombres in Spain, the Barons in France and England, enjoyed an hereditary nobility, by no other

" *other right, than that their lands, feudal or not feu-* BOOK II.
 " *dal, remained in their families.*"

On these passages it may be necessary to make some observations. It is undoubtedly true that in England, as well as other countries, the hereditary possession of *noble fiefs* gave nobility to families: but, I apprehend, the reason of this distinction was an obligation annexed to those lands, namely, *that the possessors of them were to fight for their country, at their own charges, and to administer justice to the people.* For to these honorable functions the idea of nobility might justly be attached; but not to the mere possession of hereditary lands. Fiefs were divided into *noble* and *non noble*. A mere *socage tenure*, though hereditary, could not give nobility. Justice was administered to the people by all the possessors of *noble fiefs*, in the king's court, in the county and hundred courts, or in the court baron. Some hereditary offices, such as *shrievalties* of particular counties, to which judicature was annexed, gave nobility to the families of those who held them; and so, I presume, did all offices held by the tenure of *grand serjeanty* in the king's court, or about his person. Many of these were neither military nor judicial: but they ennobled the possessors by a dignity derived from their relation to the crown and person of the king.

P. 133. *Robert earl of Mortagne, on whom he bestowed the earldom of Cornwall, had, in that and other counties, seven hundred and thirty-three manors.*

Mr. Madox observes, in his *Baronia*, " that there L. i. c. p. 3.
 " were in England certain honors, which were
 " often called by Norman, or other foreign names,
 " that is to say, sometimes by the English, and
 " sometimes by the foreign name; for example,
 " *William*

BOOK II. “*William de Forz, Deforce, or de Fortibus*, was lord of the honor of Albemarle in Normandy. He was also lord of another honor in England; to wit, the honor of Skipton in Craven. These honors were sometimes called by the Norman name, the honor of Albemarle, or the honor of the earl of Albemarle.” I have quoted this passage to account to the reader for some such titles which occur in this history.

P. 134. *For by the accounts in the Exchequer we find, that much less was taken by King Henry the Second for the farms of other earldoms escheated to the crown.*

See Madox,
Baron. l. i.
p. 72. Magn.
Rot. 4. 2.
Rot. 5. 6.

R. de Glanville, who farmed of King Henry the Second the great earldom of Richmond, was charged no more than four hundred and thirty three pounds seventeen shillings and three pence, for the manors of which the honor, or barony, was composed; and for the *third penny* of Gippeswiz (the county court), and the service of the *Drenges* (a species of tenants belonging to the manors.)

P. 135, 136. *But the Saxon earldoms were not hereditary: for, though they were sometimes permitted to descend from father to son, it was not by any right, or claim of inheritance, but on'y by the indulgence and favor of the king.*

Even so late as in the reign of Edward the Confessor, we find, that, upon the death of Siward earl of Northumberland, because his son Waltheoff was then an infant, that earldom was given to Tosti, the son of earl Godwin; and, on the death of Godwin, Algar, the son of Leofric earl of Chester, was invested with that earldom.

P. 137.

P. 137. *The form of girding them with a sword, when they were invested with their earldoms, was likewise strongly expressive of a military commission appertaining to the office and dignity of an earl.* BOOK II

An old historian, cited by Mr. Selden, says, that when Sir Andrew Harclloy, earl of Carlisle in the reign of Edward the Second, was degraded for treason, "*the sword which the king him gave, to keep and defend his land therewith, when he made him earl of Cardoill, was broke over his head.*" This shews how long the opinion continued, that the defence of the country was committed to the earl with the sword he received at his investiture. The earl of Chester, Hugh Lupus, had that county from William the Conqueror given to him and his heirs, "*Adeo liberam ad gladium, sicut ipse rex totam tenebar Angliam ad coronam suam,*" as Mr. Selden cites the words from an old author. Titles of Honor, Part II. c. v. sect. 38. Ibidem, sect. 2.

P. 141. *It is a most remarkable thing, that all the charters now extant for the creation of earls (the most ancient of which were granted by Matilda) make no mention of any determined number of knights which the earls were bound to provide.*

Of these the first in date is the charter of creation to Geoffry de Magnavilla, for the earldom of Essex, which was in these words: "*Ego Matildis, filia Regis Henrici, et Anglorum domina, do et concedo Gaufrido de Magnavilla pro servitio suo, et hæredibus suis post eum hæreditabiliter, ut sit Comes de Essexia, et habeat tertium denarium Vicecomitatus de Placitis, sicut comes habere debet in comitatu suo: &c.*" The rest relates to other grants which the empress made to the earl. Mr. Rymer, by mistake, has published in his Foedera another charter of Matilda creating Milo Fitz-walter. T. I. p. 2.

BOOK II. walter earl of Hereford, as the most ancient now extant. It runs in these words: "Sciatis me fecisse Milonem de Glocestria Comitem de Hereford, et dedisse ei motam Hereford, cum toto castello, in feodo et hæreditate sibi et hæredibus suis ad tenendum de me et hæredibus meis. Dedi etiam ei tertium denarium redditus burgi Hereford quicquid unquam reddat, et tertium denarium placitorum totius comitatus Hereford."

See Selden's
Titles of Honor,
Part II.
c. v. sect. 10.

The charter of Henry the Second to William de Albiney earl of Arundel is so particular as to be worth inserting here. The words are these: "Henricus rex Angliæ, et dux Normanniæ, et comes Andegaviæ, archiepiscopis, episcopis, &c. salutem. Sciatis me dedisse Willielmo Comiti Arundel castellum de Arundel, cum toto honore Arundelli, et cum omnibus pertinentiis suis, tenendum sibi et hæredibus suis, de me et hæredibus meis, in feodo et hæreditate, et tertium denarium de placitis de Suthsex, unde Comes est." This was not a charter of creation to an earldom, like that before recited: for William de Albiney is styled in it *earl of Arundel*: but it gives or confirms to him the castle of Arundel with the honor (or barony) thereunto belonging, and all its other appertenances, *together with the third penny of the county of Suffex*, which is said to be *his earldom*, though his title is taken from the castle. Note, that in this record the castle appears to be an appendix to the earldom, not the earldom to the castle.

Mr. Selden observes, that this lord was sometimes styled earl of *Suffex*, and sometimes of *Chester*, which denoted the same person. Yet he was more usually called earl of Arundel, the reason of which I have given in another note on this book.

P. 142. *And as other baronies differed in the number of knights-fees by which they were held, so likewise did these.* BOOK II.

For instance, it appears by records, that, during King Henry the Second's reign, the barony of the earl of Cornwall comprised two hundred and fifteen knights-fees, and a third part of a fee; that of the earl of Norfolk one hundred and twenty-five fees; and that of the earl of Warwick one hundred and two fees and a fraction.

P. 143. *We find in some charters, that the magistrates, or chief citizens of London, York, Warwick, and other principal cities, had the title of barons.*

In King Henry the First's charter to the city of London it is said, "*Ecclesiæ et barones et cives teneant et habeant bene et in pace focnas suas cum omnibus consuetudinibus, &c.*" "In which" (says Sir H. Spelman) "I understand *barones pro civibus præstantioribus qui focnas suas et consuetudines, id est, curias habent et privilegia, eorum instar qui in comitatu barones comitatus dicuntur, et liberi tenentes, quique de re feudali cognoscunt in civitate, ut alii illi barones in comitatu.*"

Spelm. Gloss.
BARONES DE
LONDON.

He mentions also another charter, viz. that of H. III. de libertatibus London, which says, *Barones civitatis London eligant sibi singulis annis de se ipsis majorem*; and a writ of H. I. address *Fulchero filio Walteri, et Eustachio vicecomiti suo et omnibus baronibus de London.* After which, he says, "*Sic barones de Eboraco, de Cestria, de Warwic, de Feverham, et plurium villarum regis privilegium insignium, &c.*"

Matthew Paris, speaking in general of the Londoners, says, "*Londonienses, quos propter civitatis dignitatem, et civium antiquitatem, barones*"

"con-

BOOK II.

See the Parliamentary Hist. vol. i. p. 369.

"*consuevimus appellare.*" Yet I hardly think the inferior citizens could ever be called barons, but only the magistrates, or those in whom the power of the city resided. In the poll tax of the first year of King Richard the Second, each of the *aldermen* of London was rated *as a baron*; the mayor as an earl; and all other mayors of great towns in England, each *as a baron*.

P. 147. *Madox says, he (the constable) was a high officer both in war and peace, and observes that the word signifies a captain or commander.*

The Author of the dialogue de Scaccario uses a strange expression in describing this officer at the Exchequer. He says, that next to the chancellor sat "*miles gregarius quem contestabularium dicimus.*" It is amazing that he should call so high an officer *a common soldier*, especially as he tells us in the same place, that the constable had the precedence of the king's mareschall, "*post hunc duo camerarii, &c. post hos miles, qui vulgo dicitur marescallus;*" and (in another part of his book) that he could not easily be drawn from the king to attend the lesser affairs of his office at the Exchequer, because of greater and more urgent business; "*quia contestabularius a rege non facile potest avelli propter majora et magis urgentia.*" Sir William Dugdale takes notice that he is styled in some records *princeps militiae domus regiae*.

V. Dial. de Scaccario in fine Madox Hist. of the Excheq. l. i. p. 8. and 10.

See Madox's Baronia, l. i. c. 6. p. 115, 116.

P. 150. *In its first sense it signified master of the horse to the king.*

There were also inferior mareschalls in the king's stables, and employed in the care of his hawks, &c. over all whom the great mareschall presided; and therefore

BOOK III. "subjects (and these gave it without any superior authority granted to them) as well as sovereigns, Though *long since* it hath grown to be clear, none gives it with us but the sovereign, or some other by his command or commission." It appears that the liberty of receiving it from a subject, uncommissioned by the king, was sooner taken from the king's immediate tenants in chief, than from others. Mr. Selden mentions a writ of the twenty-ninth of Henry the Third, in which those of the second kind (that is, such as held military fees of subjects) were to be distrained, *quod tunc sint ibi parati ad recipiendum arma de quibuscunque voluerint*. In which form the writs went to all the subjects of England. He likewise cites writs of summons or *distringas* from the close rolls of the forty-fourth of Henry the Third, of the sixth of Edward the First, and of the sixth of Edward the Second, in which a distinction is made, that some were to come and receive knighthood from the king; and others, *being not tenants to the king*, should be summoned or distrained *ad se milites faciendos, or, ad arma suscipienda*.

Ibid. Nay our kings themselves have been knighted by the hands of their subjects, as Henry the Sixth by the duke of Bedford's, and Edward the Sixth by the duke of Somerset's.

In France, the great restorer and patron of chivalry, Francis the First, chose to receive the order of knighthood from his subject, Monsieur Bayard, illustrious only by his valour and a conduct without reproach. Mr. Selden quotes a passage from M. Paris, in which it is said, that, in the year 1252, Alexander the Third, king of Scotland, having been knighted by Henry the Third, king of England, the

Titles of Honor, part ii.
c. v. sect. 34.

the Earl Mareſchal demanded the king of Scotland's BOOK II.
 horſe and accoutrements, as a fee due to him by
 ancient cuſtom: but that prince answered, that he
 conceived no ſuch fee could be due to the Earl
 Mareſchall from him, *becauſe, at his own pleaſure, he*
might have received his knighthood, either from any
other catholick prince, or from any of his own nobles.
 Mr. Selden by nobles underſtands gentlemen, and I
 believe very rightly.

P. 167. *The poet Gunther, who was contemporary with Henry the Second, ſays, in a Latin poem, that the Emperor Frederick Barbaroffa, the better to repel the enemy from his borders, and defend his country by the ſuperior force of his arms, granted knighthood to many perſons of low and vulgar birth, which in France would have been thought a ſtain to that dignity.*

By ſome old laws of France, if any man, who
 was not a gentleman by his father (though he was
 ſo by his mother), had been made a knight, his lord
 might degrade him, by cutting off his ſpurs on a
 dunghill. Du Cange aſſerts, that it was neceſſary
 for a perſon who aſpired to the order of knighthood
 to prove, that not only his father and mother, but
 his grandfather and grandmother, were nobly born;
 which Father Daniel confirms, but obſerves, that
 in France and other countries this rule in time was
 relaxed, and that the French kings diſpenſed with it
 on many occaſions.

See Selden's
 Titles of Ho-
 nor, part ii.
 c. iii. ſect. 24.

V. Du Cange
 Diſſertat. x.
 ſur l'Histoire
 de St. Louis,

V. Hiſt. de la
 Milice Fran-
 coiſe, t. i.
 l. iii. c. 47

Ibid. *And in the nineteenth year of the ſame king (Henry the Third), all the ſheriffs of England were commanded to make proclamation in their reſpective counties, that all who held of the king in chief one knight's-fee or more, and were not yet knighted, ſhould take arms and get themſelves*

A a 2

knighted

BOOK II.

knighted before the next Christmas, as they loved the tenements, or fees, which they held of the king.

It seems that this injunction was afterwards thought too hard on the poorer knights. For it was declared by act of parliament, in the first year of king Edward the Second, "that none
" should be forced to take upon them the order
" and arms of a knight, who had not twenty
" pounds yearly in fee, or for term of life; or
" before they came to the age of one and twenty
" years. And such as had holden their lands but
" a small time, or alledged great age or default of
" their members, or any other incurable disease,
" or charge of their children, or suits, or any other
" such necessary excuses, were only to pay a reasonable fine." But it must be observed, that this act does not confine the obligation of receiving knighthood to tenants in chief of the crown. Britton, who wrote about the time of Edward the First, says, that a lord could not legally compel his tenant to give him the aid due by tenure for making his son a knight, if he was not a knight himself.

See Britton, c. des prises des avoires.
Selden's Titles of Honor, part ii. c. v. sect. 36.

P. 168. *Whether, in the times that I write of, any compulsion was used to oblige men to be knighted, I cannot positively affirm: but as Mr. Madox, in his history of the Exchequer, has given no records of any fines being levied on that account, or proclamations issued to enjoin it, till the reign of Henry the Third, and many in and after that reign, the presumption is strong, that it had not been the practice before the death of King John.*

See his Britannia, States and Degrees of England.

Camden dates this compulsion from the reign of Henry the Third, and observes, that from that time it seemed a title of burthen rather than of honor. Indeed we may reckon a practice, so contrary to the spirit

spirit and policy of knighthood, among the bad BOOK II. methods made use of, by the rapacious ministers of that king, to draw money from the subject.

P. 170. *Every knight had his lady, to whom he vowed faithful service, whose favors he wore in tournaments and in battles, and for whose honor he was always prepared to combat with no less zeal and enthusiasm, than for the defence of the catholic religion itself.*

Even in the reign of Queen Elizabeth, a challenge was sent by the earl of Essex, to the count de Brancas Villars, who was governor of Rouen, then besieged by king Henry the Fourth of France and his English confederates under the command of that earl; in which he offered to maintain, among other points, *that he had a more beautiful mistress than Villars.* It must however be observed, that, in doing this, he shewed himself, not only a good knight, but a good courtier: for he knew the queen would think, that *she* was the *mistress* of whose beauty he proposed to be the champion. This, and some other similar passages of that reign, shew us the reason why Spenser, who was a man of good sense, as well as a fine poet, thought he could not make his court more agreeably to his sovereign, who loved the notions of romantick gallantry and honor, than by representing her, in his *Fairy Queen*, as the patroness of the most sublime chivalry, and as sending forth the moral virtues, illustrated under the characters of different knights, to free the world from vice and oppression, and to merit her favor by heroic actions. In this light the *Fairy Queen* is as much a state poem, as the *Aeneis* of Virgil.

P. 175. *The ransoms paid to knights for the prisoners they took, and the shares assigned to them, by*

BOOK II.

custom, of all the booty and spoils which were gained from an enemy, furnished them with ample means of advancing their fortunes: but they had moreover rich presents made to them by the princes, or nobles, they served, upon the performance of any eminent feats of valour.

After the battle of Poitiers, the English said, *that they would not set so high a price upon a knight or gentleman, but that he might still be able to live according to his rank, and to follow the wars in an equipage agreeable to his quality.* This is mentioned by Froissard as an act of generous courtesy. Mr. Selden says, that, by the law of arms, those captives, whose ransom came to above 10,000 crowns, belonged to the king. Barnes tells us, after Froissard, that by their victory at Poitiers all the prince's men were enriched, as well by ransoming, as by the spoil they found there, consisting of gold, silver, plate, and jewels, besides horses, armour, and what they found about the dead. At the end of the action the prince embraced the Lord Audley, and said to him, *Sir James, both I myself and all others acknowledge you, in the business of this day, to have been the best doer in arms. Wherefore, with intent to furnish you the better to pursue the wars, I retain you for ever to be my knight, with five hundred marks yearly revenues, which I shall assign you out of my inheritance in England.* Five hundred marks *per annum* in those days was a very noble estate. But the generous knight, though much pleased with the honor of the gift, divided it all among his four esquires, who had served him well in the battle. When the prince knew this, he confirmed the grant to them, and settled on him a further pension of *six hundred marks*, which was confirmed to him by the king for the term of his life, and for a twelvemonth after, to be received out of the coynage of the stannaries in Cornwall,

Cornwall, and the prince's lands in that county. BOOK II.
 Many more instances might be given, to shew the profits that knights might gain by their chivalry, when these institutions were in force. The trade of war seems at present to be mote gainful to the general, but much less to the officers or private soldiers of an army, than it was in those days.

P. 176. *Indeed it never quite sunk, till the spirit of chivalry began to grow out of fashion, and was even rendered the object of ridicule.*

The fear of this consequence made the duke d'Alva say, *that Don Quixote would ruin Spain*; though, in truth, the ridicule of that ingenious book is not pointed against the spirit of chivalry, but against the absurd representation of it in the Spanish romances.

P. 178. *I will add, that the two last, who appear to have fashioned themselves upon the same model, and to have possessed in perfection all the virtues of their order, were, in France, the Chevalier Bayard, and in England, Sir Philip Sidney.*

In valour, courtesy, generosity, and a high and noble sense of honor, the peculiar virtues of chivalry, these two knights may be well compared together; but Sir Philip Sidney's character, upon the whole, is much superior to Bayard's, because he not only excelled that gentleman in wit and learning, but was also endowed with great talents and abilities for state affairs, as we know from the testimony of the greatest statesman of that age, William prince of Orange, who sent this message to Queen Elizabeth by Sir Fulk Greville, "that (in his judgement) *her majesty had one of the ripest and greatest counsellors of state in Sir Philip Sidney that then lived in Europe,* to the trial of which he was pleased to leave *his*"

See Sir F. Greville.
 Lord Brock's Life of Sir P. Sidney, c. ii.
 P. 31.

“ *own credit* engaged, until her majesty might
 “ please to employ this gentleman either amongst
 “ her friends or enemies.”

P. 34.

C. iii. p. 3.

The *credit* of the prince of Orange wants no support; but I will add, from the same author, Sir Fulk Greville, the testimony of the earl of Leicester, who said to Sir Fulk, “ that, when he undertook the government of the Low-countries, he carried his nephew (Sir Philip Sidney) over with him, as one amongst the rest; not only despising his youth for a counsellor, but withal bearing a hand over him as a forward young man. Notwithstanding, in short time, *he saw this sun so risen above his horizon, that both he and all his stars were glad to fetch light from him.* And in the end acknowledged, *that he held up the honor of his casual authority by him whilst he lived, and found reason to withdraw himself from that burthen after his death.*” But, lest this praise might be suspected, as coming from a relation, Sir Fulk says further: “ In what extraordinary estimation his worth was, even amongst enemies, will appear by his death; when Mendoza, a secretary of many treasons against us, acknowledged openly, *that, howsoever he was glad King Philip, his master, had lost in a private gentleman a dangerous enemy to his state; yet he could not but lament to see Christendom deprived of so rare a light in these cloudy times, and bewail poor Widow England (so he termed her) that, having been many years in breeding one eminent spirit, was in a moment bereaved of him by the hands of a villain.*” (or low common soldier; for that is the meaning of the word *villain* in this place).

We may therefore conclude, that, in the faculties of his mind, Sir Philip Sidney rose above the highest pitch of knightly accomplishments, and

WAS

was not only *un Chevalier sans peur et sans reproche*, BOOK II.
 but fit for the greatest offices of state and government. It seems indeed no less dishonourable to the memory of Queen Elizabeth, that she should have let such a spirit and such talents as his remain so long unemployed, than that she should have trusted so much of her most arduous business to her unworthy favorite the earl of Leicester! As for the Chevalier Bayard, he does not appear to have had any extraordinary parts, or to have been rankt among the *statesmen* of the times in which he lived: nor had he any superior degree of knowledge, to distinguish him much from the ignorant nobility of his country: whereas Sir Philip had acquired such a reputation for science and taste in the fine arts, that (to use the words of the abovementioned author) “*the universities abroad and at home accounted him a general Mæcenæ of learning; dedicated their books to him, and communicated every invention or improvement of knowledge with him. There was not a cunning painter, a skilful engineer, an excellent musician, or any other artificer of extraordinary fame, that made not himself known to this famous spirit, and found him his true friend without hire, and the common rendezvous of worth in his time.*” Since I wrote this, the publick has been entertained with the life of a very extraordinary man, the Lord Herbert of Cherbury, written by himself; from which he appears to have been as strongly possessed with the high spirit of chivalry as Sir Philip Sidney, and was also a man of parts and learning. But he seems to have had weaknesses and defects in his character, arising chiefly from vanity, which are not to be found in Sidney, none of whose actions were improper, and much less were they ridiculous. Yet it must be

BOOK II. be owned, if these gentlemen are compared as *writers*, that Lord Herbert's History of King Henry the Eighth is superior upon the whole to any work of Sir Philip Sidney.

P. 179. *Whether, in the times of which I write, we had any knights bannerets is not very clear. The name does not occur in our histories or records before the reign of Edward the First.*

Hist. of the
Exchequer,
p. 614. note 1.

Mr. Madox has cited a roll of the twenty-fifth year of that king, in which they are mentioned, together with *knights bachilers*; which latter denomination was relative to the former, signifying knights of an inferior rank to the bannerets. But *milites vexilliferi* are mentioned by Matthew Paris before that time, and one can hardly doubt that these words are a Latin translation of knights bannerets. Father Daniel says, in his Treatise on the Militia of France, that he can find no mention of them in any historian before the reign of Philip Augustus. But he observes, that the writers of that time do not speak of them as a novelty; and therefore he supposes, that this institution commenced when the regulations for tournaments and other matters of chivalry were made in France. We probably received it from thence: but under what reign is uncertain. Mr. Camden erred much, in supposing it so late as Edward the Third's.

See his Account of Degrees of States in England, prefixed to his Britannia.

P. 180. *In reality this was not a new order of knight-hood, but only a higher rank, conferred by the sovereign, or by the general of a royal army, on some of that order, who were richer than others, and were followed into the field by a greater number of vassals.*

It

It appears by a record, which Selden had cited on **BOOK II.** this subject, that in Edward the Second's reign the pay of a banneret was four shillings a day; the pay of each of the knights, who served under his banner, two shillings; and of each esquire, one shilling. In the great roll of the sixteenth of Edward the Third, the same sums are allowed by the king to a banneret, for his own pay, and for that of three knights and thirty-six men at arms. Camden cites a charter of the same king, by which he advanced Sir John Coupland to the state of a banneret, because, in a battle fought at Durham, he had taken prisoner the king of Scotland; and it runs in these words: "Being willing to reward the said John, who took David de Bruce prisoner, and frankly delivered him unto us, for the deserts of his honest and valiant service, in such sort as others may take example by this precedent to do us faithful service in time to come; we have promoted the said John to the state and degree of a banneret; and for the maintenance of the same state we have granted for us and our heirs to the same John five hundred pounds by the year, to be received for him and his heirs, &c."

Titles of Honor, part ii. c. 5.

See Madox's Baronia, p. 160.

V. Britannia, p. 171. old edition.

Here we see that the means of maintaining the dignity was a grant from the crown made after the promotion: but generally the knight so promoted was qualified with a sufficient estate before his advancement. Mr. Selden quotes an ancient book, to shew, that, in France, it was required that a banneret should have a sufficient estate to maintain fifty gentlemen to accompany his banner. But another, which he also cites, informs us, that, in Burgundy, it was enough if he was attended with twenty-

Titles of Honor, part ii. c. iii. sect. 23.

BOOK II: twenty-five. From the grant having been made to Coupland *and his heirs*, and from the mention of *inheritance* in the speech of Sir John Chandos to the *Black Prince*, which I have recited in this book, one should think that the dignity of banneret was hereditary: but Mr. Selden affirms, it never was so in England. The difficulty may perhaps be solved in this manner. The honor of knighthood was personal, and never descended to the heir of a knight without a new creation: but when the heir of a banneret was made a knight, he was entitled to the state and degree of a banneret by right of inheritance. Thus it appears by a writ, that, under Richard the Second, Thomas Camoys was a banneret, *as many of his ancestors had been before him*; and for that reason he was discharged from being knight of the shire for the county of Surrey. “Rex
 “Vicecomiti Surriæ, salutem: Quia, ut accepi-
 “mus, tu Thomam Camoys Chivaler, qui ban-
 “nerettus est, *sicut quamplures antecessorum suorum*
 “*extiterint*, ad essendum unum militum venien-
 “tium ad proximum parlamentum nostrum pro
 “communitate comitatûs prædicti, de assensu
 “ejusdem comitatûs, elegisti; nos advertentes
 “quod hujusmodi banneretti, ante hæc tempora,
 “ratione alicujus parlamenti eligi minimè consue-
 “verunt, ipsum de officio militis, ad dictum par-
 “lamentum pro communitate comitatûs prædicti
 “venturi, exonerari volumus.” But there is much obscurity in this matter. For Mr. Selden shews, that this Thomas Camoys was a baron and a peer of that parliament, and that many of his ancestors had likewise been peers. It is therefore equally strange that he should have been elected a knight of the shire, or discharged from that service as a *banne-
 ret,*

Titles of Ho-
 nor, part ii.
 c. v. sect. 25.

ret, and not as a baron. Mr. Selden indeed ob-
 serves, that the name of *banneret* is given to some
 temporal barons, as if in them it were equivalent
 and synonymous to *baron*. In the first of Richard
 the Second, divers earls and barons are mentioned
 by name in the parliament roll, "*et plusieurs au-*
" tres seigneurs barons et bannerets etans au dit parle-
" ment assemblés." But this was after the intro-
 duction of barons by writ. The same learned wri-
 ter shews, that in France the form of making ban-
 nerets was by cutting off the point or end of the
pennon or streamer, and so altering the shape of it
 into a square banner. But it does not appear that
 this ceremony was used in making Sir John
 Chandos a banneret, as is related in this book,
 p. 247. Father Daniel says, that in France the eldest
 sons of bannerets, before they were knighted, were of
 inferior rank to knights bachilers, and served under
 their pay, being called *Esquires Bannerets*: but when
 they had received the order of knighthood with the
 usual ceremonies, they had a right of advancing their
 banners after the death of their fathers, and so the
 dignity of banneret may be said to have been pa-
 trimonial and feudal.

BOOK II.

Titles of Ho-
nor, c. v.Ibidem, c. iii.
sect. 23.V. Hist. de la
Milice Fran-
çoise, l. 3.
c. v. t. i.

P. 181. *This alternative was, I presume, the real
 motive, that induced them to be guilty of such gla-
 rious absurdity, as to inflict these penances upon sol-
 diers, for killing or striking their enemies in the
 prosecution of a war, which they themselves admit-
 ted to be lawful; &c.*

In one of the subsequent canons, three years
 penance is enjoined, by the mercy of the bishops, to the
 Normans who fought at Hastings, instead of one
 year for every man whom they knew they had slain
 in that battle, and forty days for every man they
 knew

BOOK II.

V. Spelman's
Concil. v. ii.
Can. i.
Ibidem, c. ix.

knew they had struck. "Sed qui in *publico bello* pugnaverunt, *pro misericordia* tres annos pœnitentiae eis episcopi statuerunt." *Publico bello* here signifies the war against Harold, and particularly the battle of Hastings, which in one of the former canons is called *magno prælio*; and mentioned in another by these words, *excepto hac prælio ante regis consecrationem*. The sixth canon, of which notice is taken a little lower in the page here referred to, runs in the following words: "Qui autem tantum præmio adducti pugnaverunt, cognoscant se tanquam pro homicidio pœnitere debere." I have followed the learned Mr. Johnson in translating *homicidium* murder, because it is generally so used by the writers of that age.

P. 186. Yet in *Domesday-book* they are distinguished from other free tenants, called there *liberi homines*, by not having the power, which these enjoyed, of giving away, or selling, their estates, without leave of their lords. It seems that these *liberi homines* were a remainder of the *alodial* tenants of the Saxon folkland, that is, land of the vulgar, opposed to *bockland* or *thaneland*. A certain number of them was necessary to constitute a manor; and therefore, when that number was incomplete, some who held in *villénage* were enfranchised, to make it up; as appears by the testimony of the record abovementioned. We also find there, that some who were in possession of this *alodial* freedom thought it more eligible to seek a defence and protection, by recommending themselves to the patronage of some feudal lord, or even of two lords, if the situation of their lands made it necessary for them to have two protectors. The services which were performed by them to the lord of the manor, in their

their alodial state, were predial and rustick. A BOOK II,
 certain number of free socmen, as well as of these,
 appears to have been necessary to every lord of a
 manor, for holding the pleas of the manor court,
 &c.

I will give some proofs of all these several assertions. In the lesser Domesday book frequent mention is made of the *liberi homines* in these terms:
 “*Iste liber homo fuit: suus homo fuit; potuit vertere*
se quo voluit; potuit terram suam vendere vel dare;
potuit recedere sine licentia domini.” All these expressions denote an alodial tenure; the feudal tenants being more closely bound to their lords, and not having such liberty.

In the manor of Simpling in Norfolk it is said,
 “*Quatuor liberi homines liberati fuere ad hoc manerium perficiendum.*” Before these men were *liberati*, enfranchised, they must have been in villenage, slaves, or bondmen.

In the lesser Domesday-book mention is made of *liberi homines commendati*, *dimidii commendati*, and even *dimidii subcommendati*. The nature of this *commendatio* is thus explained: “*Liber homo hanc terram tenebat, et quo vellet abire valebat: summisit se in manu Walteri de Dowai, pro defensione sui.*”

It appears by the Survey, that in Gloucestershire there were *liberi homines* in the time of Edward the Confessor called *Radechenisters*, and that they ploughed, harrowed, and sowed, the demesne lands for their lords.

That a certain number of free socmen, as well as of these, were necessary to a manor, may be proved from this passage in the Survey, “*Tres istorum socmannorum accommodavit Rictus Roger Comiti, propter placita sua tenenda.*” I need not observe, that none but freemen could hold pleas,

See Domesday-book, f. 18.

Tit. Gloucester, Bercheley et Deihurst.

Spelman's Gloss. RADER-CHENISTER.

BOOK II. P. 188. *In Domesday-book, that great record of the ancient state of this kingdom, a distinction is made between villeins, who were affixed to a manor, and others of still a lower and more servile condition, distinguished by the names of bordarii, cotarii, and servi, &c.*

See Appendix
to vol. I.
See the Saxon
laws.

See the Statute
of Merton.

Glanville, l. 5.
Coke's Inst.
vol. i. l. ii.
c. 11.

In a note to one of the laws of William the Conqueror, transcribed in the Appendix to the first volume of this History, I have observed, that sometimes the word *villanus* signifies not a *slave*, but a *farmer, inhabiting a village*, which is the first sense of the word, and in which it must be taken where persons called by that name seem to be equalled with *burgesses*. But, in Glanville and other law books, *villanus*, or *villein*, was a man *regardant to a manor*, so as to go along with it whenever it changed its master, and in such absolute servitude, that his person, children, and goods, belonged to his master. Indeed Judge Littleton says, "that if a man is "seised of a manor, to which a villein is regardant, and granteth the same villein by his deed "to another, then he is a villein *in gross*, and not "regardant." But this alteration of the name made none in his state, with respect either to the liberty of his person and family, or the property of his goods.

P. 189. *Yet in other places he gives the appellation of bondmen to all below the degree of ceorls or free focmen.*

See his Treatise on Feuds and Tenures, c. v.

This learned author (Sir H. Spelman) describes the *ceorls* "as husbandmen, who lived upon the "outlands of the Saxon *thanes*, and were customary "tenants at the will of their lords, rendering unto "them a certain portion of victuals, and things "necessary for hospitality. This rent, or retribution, they call *feorme*, from whence we derive "the

“ the name of farm and farmers. *But this service* BOOK II.
 “ *was no bondage.* For the *ceorl*, or husbandman,
 “ might as well leave his land at his will, as the
 “ lord might put him from it at his will; and
 “ therefore it was provided, by the laws of Ina,
 “ in what manner he should leave the land, when
 “ he departed from it to another place. And the
 “ writ of waste in Fitzherbert seemeth to shew, that
 “ they might depart, if they were not well used.”

These *ceorls* have been often confounded with slaves and bondmen, under an inaccurate use of the word *villani*, and so have other free inhabitants of *villages* in those days. The *free socmen* were of an order superior to these; and many of them, in the times of which I write, possessed *hereditary* estates of a strict feudal nature, which therefore they could not leave *at pleasure*, without the consent of their lords; but which they could not be put out of, without a legal forfeiture. The account given of the *ceorls*, in the passages above-cited, seems to agree with what is said in Domesday-book, of the *liberi homines*, or *alodial* tenants, at the time when that record was compiled. But some of these may have been of a higher rank and degree, according to the extent of the lands or farms they possessed. Bracton takes notice of a species of tenure in the demesne lands of the king, called *villain socage*. Those L. iv. p. 209, who held by this tenure were *gleba ascriptitii*, affixed to the land, and performed *villain services*, but *certain and determined*. Their privilege was, that, while they would and could perform these services, they could not be turned out. Nor could they be compelled against their will to hold such tenements; for which reason they were called *free*. Yet they could not dispose of their tenements, nor transfer them to others by way of gift, no more than *mere villeins*; but, if they removed, they

BOOK II. delivered up their tenements to their lord, or his bailiff, who gave them to others to be held in villenage. Bracton distinguishes these *villein socmen* from those who held of the king in *free socage*; and from some whom he calls *adventitii*, who held by covenant in the same manner as *villein socmen*, but had not the same privilege.

P. 190. *Nay we are told by Glanville, that in his time, if a freeman married a woman born in villenage, and who actually lived in that state, he lost thereby the benefit of the law (that is, all the legal rights of a freeman), and was considered as a villein by birth during the life-time of his wife, on account of her villenage.*

L. i. p. 5.

Bracton says, that a child begotten by a freeman, whether in marriage or not, upon a woman born in villenage, and living in that condition, was born a slave: but if the woman was out of the power of her lord, though born in servitude, and was married to a freeman, the issue of that free bed would be free. This explains what is said more indistinctly by Glanville.

I dwell on these circumstances, as they make a very curious part of the history of those times, and (God be thanked) are little known at present to my countrymen.

P. 191. *But he says, that no villein could acquire his freedom with his own money: for, notwithstanding his purchase, he might, according to the law and customs of the kingdom, be brought back into villenage; because all the goods of a villein born belonged to his lord; &c.*

L. ii. c. 11.
feft. 172.

Sir Thomas Littleton says, "that no land holden in villenage or villein land, nor any custom arising out of the land, shall ever make a freeman

" freeman villein; but a villein may make free
 " land to be villein land to his lord. And where
 " a villein purchaseth land in fee-simple, or in fee-
 " tail, the lord of the villein may enter into the
 " land, and oust the villein and his heirs for ever.
 " And after, the lord, if he will, may let the same
 " land to the villein to hold in villeinage." I would
 observe, that neither here, nor in any other part of
 this author's book, relating to villenage, is any dis-
 tinction made by him between *villeins* and *servi*
nativi or *bondmen*; but he uses the former word as
 comprehending all those, whose persons, children,
 and goods, were the property of their lords, whe-
 ther they held lands or no; which shews that, in
 his time, the legal sense of the term *villein* was the
 same as in Glanville's, and that the servitude of those,
 who were in that state, continued unaltered, though
 he speaks of it as a *tenure* when lands were held by
 the villein, and mentions also *villein service*, " as
 " to carry or recarry the dung of his lord out of
 " the city, or out of his lord's manor, unto the land
 " of his lord, and to spread the same upon the
 " land, and such like." Bracton also speaks of *L. iv. p. 190.*
 slaves who *held in villenage* of their lord, and uses
 the Latin words *villanus* and *servus* as synonymous
 terms. He likewise puts a case, of a lord giving
 his slave land to be held *by free service*, without *Ibidem.*
 having enfranchised him; and says, " that such a
 " gift or grant does not alter the servile state of the
 " tenant, because a tenure in villenage does not take
 " away any liberty from a free person, nor does a
 " freehold confer liberty upon a villein. But if,
 " without *manumission*, a lord gives a freehold to
 " be held by the slave *and his heirs*, it might be
 " presumed that he meant to enfranchise him, be-
 " cause a slave could have no heirs without being
 " enfranchised."

BOOK II. P. 195. *But yet, as in Littleton's Tenures, which were written during the reign of King Edward the Fourth, there is a whole chapter concerning the state of persons in servitude, it is evident that many such were still remaining in those days.*

See Parlia-
mentary Hist.
p. 386, 387.
vol. I.

Many slaves were enfranchised in consequence of the rebellion headed by Wat Tyler and Jack Straw, in the fourth year of the reign of King Richard the Second. But the next year the king complained to his parliament, that he had been forced to grant charters of liberty and manumission, under the great seal of England, to the rebels, who were only bond-tenants and villeins of the realm: which knowing to be done against law, he desired them to seek remedy, and provide for the confirmation or revocation thereof. Whereupon the lords and commons unanimously resolved, *that all grants of liberties and manumission to the said villeins and bond-tenants, obtained by force, were in disherison of them, the lords and commons, and destruction of the realm; and therefore to be null and made void by authority of parliament.* Nevertheless it is probable, that the apprehensions of such another insurrection had no small effect to incline the lords of manors, both to treat their slaves better, and to lessen the number of them, from this time forwards. But the progress of this disposition was gradual and slow, as all such changes must be.

P. 217. *If we look to the best accounts of the original customs of the ancient German nations, we shall find that, in their communities, all the freeholders enjoyed an equal right with the nobles, to assist in deliberations on affairs of great moment.*

V. Cluver.
German.
Antiq. l. i.
p. 94, c. 11.
Sheringham,
p. 77.

Tacitus says, that in Germany (under which name, in his time, were comprehended all those countries from whence the Saxons and Angli originally

ginally came) “ de *minoribus* rebus *principes* con-
 “ sultant, de *majoribus omnes*; ita tamen, ut ea quo-
 “ que, quorum apud *plebem* arbitrium est, apud
 “ *principes* pertractentur.” By the word *plebem*
 here used, we must understand *the inferior orders of*
freemen: for the same author says, that even the
liberti were of no account in their commonwealth.
 “ *Liberti non multum supra servos sunt, raro ali-*
 “ *quod momentum in domo, nunquam in civitate,*”
 &c. And the sense of the word here is further ex-
 plained by a passage in Cæsar’s Commentaries con-
 cerning the Germans. He says, “ *Neque quis-*
 “ *quam agri modum certum, aut fines proprios*
 “ *habet; sed magistratus ac principes, in annos*
 “ *singulos, gentibus, cognationibusque hominum*
 “ *qui unâ coierunt, quantum eis et quo loco vi-*
 “ *sum est, attribuunt agri, at anno post alio trans-*
 “ *ire cogant, cujus rei multas afferunt causas,*” &c.
 one of which is “ *ut animi æquitate plebem conti-*
 “ *neant, quum suas quisque opes cum potentissimis*
 “ *æquari videat.*” In this place it is evident, that
plebem signifies those who had a share in the annual
 distribution of lands, and consequently were free-
 men, but of the inferior orders. And that *all those*,
 by the German customs, concurred with the nobles
 in consulting upon and determining affairs of *great*
moment, appears undeniably from the passage of
 Tacitus above-cited.

Tacitus de
 moribus Ger-
 man. c. 25.

P. 218. *We are assured, by a record which Dr. Brady has cited, that, so late as in the fifteenth year of King John, not only the greater barons, but all the inferior tenants in chief of the crown, had a right to be summoned to parliament by particular writs.*

The words are these: “ *Rex baronibus, militibus,*
 “ *et omnibus fidelibus, totius Angliæ, salutem, &c.*”

V. Rot. Par.
 15 Johan.
 p. 2. m. 2.

BOOK II. "*Unicuique vestrum, si fieri potest, literas nostras super hac transmissimus; sed ut negotium illud, quod et nobis et vobis ad commodum cedat et honorem, cum majori expediretur festinatione, has literas,*" &c.

See Selden's
Titles of Honor,
last edit.
par. ii. p. 738.

Mr. Selden has given us, in his Titles of Honor, another writ of summons sent the same year, viz. the fifteenth of King John; the words of it are: "*Rex Vicecomiti Oxon. salut. Præcipimus tibi quod omnes milites ballivæ tuæ, qui summoniti fuerunt esse apud Oxoniam ad nos a die omnium sanctorum in xv dies, venire facias cum armis suis; corpora vero baronum sine armis singulariter; et iv discretos milites de comitatu tuo illuc venire facias ad nos ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri. Teste meipso apud Wilton xi die Novembris.*"

Eodem modo scribitur omnibus vicecomitibus.

Mr. Selden calls this *a strange writ of summons*, and says, that, for aught he has seen, *it is without example*. So strange indeed it is, that I am unable to understand what it means. If the *quatuor discreti milites*, whom the sheriff was to send out of every county, were representatives of each county, or knights of the shire, what were the other *milites qui summoniti fuerunt esse apud Oxoniam, &c.*? If these latter knights were, as Mr. Selden seems to suppose, the inferior tenants in chief, who, by the clause in King John's Magna Charta, are distinguished from the greater barons, and are to have only a general summons to parliament, what were the four whom the sheriff was required to send out of every county, *ad loquendum nobiscum de negotiis regni nostri*? There is no notice taken, that they were to be chosen *de legalioribus et discretioribus militibus singulorum comitatum*, as in the summons of the forty-ninth of Henry the Third, nor who were

were to chuse them; but it rather seems to have been left to the sheriff himself. Neither does it appear, why the other *milites qui summoniti fuerunt* were ordered to come with their arms and the barons unarmed, nor who these barons were. If they were the king's barons, the *barones majores*, they ought to have been summoned by letters from the king, and not by the sheriff. The whole is so obscure, that I can draw no inference from it, except that there was, at that time, an irregularity and arbitrary variation in the summons to parliament, which might be owing to the confused and unsettled state of the kingdom.

Two years afterwards, a method of summons for tenants in chief of the king, with a distinction between his greater barons, and other vassals of a degree inferior to those, was settled by one of the clauses in King John's Magna Charta, which I shall transcribe from the manuscripts of the greatest authority, viz. those which Dr. Blackstone has followed in his edition. "Et ad habendum commune consilium regni de auxilio assidendo, aliter quam in tribus casibus prædictis, vel de scutagio assidendo, *summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones, sigilatim per literas nostras: et præterea faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum; et in omnibus literis illius summonitionis causam summonitionis exprimemus: et sic factâ summonitione negotium ad diem assignatum procedat secundum consilium illorum qui præsentés fuerint, etsi non omnes summoniti venerint.*"

The words *faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis*

BOOK II. *tenant in capite*, do not express an *election* or *representation*, but only direct that the summons to these should be *general by the sheriffs or bailiffs of the king in each county*; whereas the others were to be summoned *by particular writs*. In the first writ cited here, of the fifteenth of King John, the summons was general, as well to the greater barons, as to the king's inferior tenants in chief; but it is declared in the writ itself, that this was done against the proper form, and only for more expedition: "Ut negotium illud, quod et nobis et vobis ad commodum cedat et honorem, *cum majori expediretur festinatione.*" This clause of King John's charter re-establishes and confirms the ancient method with relation to the greater barons, but admits of the general summons with relation to all others who held *in capite* of the crown. There is in it no intimation, that they were to be represented by knights of the shire, as Spelman and others suppose: nay, the last words thereof seem rather inconsistent with any kind of representation, "et sic factâ summonitione, negotium ad diem assignatum procedat *secundum consilium illorum qui presentes fuerint, etsi non omnes summoniti venerint.*" This was proper to be declared in the case of a general summons to a large number of persons, because there the non-attendance of many among them might well be apprehended: but, had they been required to appear by representatives from every county, such a declaration would not have been necessary, nor could it have been prudently made.

The term of forty days, which is assigned in the clause for their coming to parliament after their summons, and the promise there given, that the cause of their summons should be expressed in the writs, I suppose were agreeable to the usage of the
kingdom

kingdom in cases of the same nature, that is, in the summons to all the greater barons, to the knights of the shires, and to the representatives of cities and boroughs. But it must be observed, that, in all the ancient copies of the several charters of King Henry the Third, this clause is left out. I have seen an accurate transcript of that which he granted in the first year of his reign, taken from the archives of the church of Durham; and there I find the reason why this and some other clauses of King John's Magna Charta were omitted therein. The words are these: "*Quia vero quædam capitula in priore cartâ continebantur, quæ gravia et dubitalia videbantur, scilicet de scutagiis et auxiliis assidendis, de debitis Judæorum, et aliorum, et de libertate exeundi de regno nostro vel redeundi in regnum, et de forestis et forestariis, warennis et warennariis, et de consuetudinibus comitatum, et de ripariis et eorum custodibus, placuit supradictis prælatis et magnatibus ea esse in respectu quousque plenius consilium habuerimus, et tunc faciemus plenissime tam de hiis quam de aliis quæ occurrerint emendanda, quæ ad commune omnium utilitatem pertinuerint et pacem et statum nostrum et regni nostri.*" (For the ease of the reader, I give this clause without the abbreviations in the old writing.) The difficulty therefore concerning the assessment of scutage and aids, about which there was a doubt, and which the king's ministers might think an encroachment upon his prerogative, occasioned this clause to be left out, together with some others. In the subsequent charters of King Henry the Third, provision is made, *that scutage shall be taken as it was in the time of King Henry the Second*: "*Scutagium de cætero capiatur, sicut capi solebat tempore regis Henrici*"

" *avi*

BOOK II. "*avi nostri.*" And there is a general saving to all persons, of the liberties and free customs they had before enjoyed. "*Et salvæ sint archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, templariis, hospitalariis, et omnibus aliis, tam ecclesiasticis quam secularibus personis, libertates et liberæ consuetudines quas prius habuerunt.*" This was a medium between an express declaration (such as had been inserted into King John's Magna Charta) of the right of the subject to have no aids or scutage taken without consent of parliament, and a denial of that right on the part of the crown. But the clause in King John's charter, concerning the method of summons to parliament, was entirely dropt in all the subsequent charters both of King Henry the Third and King Edward the First. Sir H. Spelman assigns it as a reason for this omission, that this whole branch of King John's Magna Charta was not comprized in the articles between him and his barons; whereupon that charter was grounded, but gained from him afterwards. Yet, as I see no cause why King Henry the Third, or his son, should have been unwilling to agree to this method of summons, which was much more easy and convenient to them than the former, I rather ascribe it to a dissatisfaction in some of the inferior tenants in chief, who might think it an injurious diminution of their privileges, not to be summoned as the greater barons were, and as these usually had been, by particular writs. This might probably induce the crown to recur to the old method of summons; till the expedient of representing them by knights of the shires, in the same manner as other freeholders in the several counties had before been represented, and thus exempting them from the obligation

V. Spelman of
Parliaments,
p. 65.

ligation of attending in person, was agreed to and settled, about the middle, or, towards the latter end of the reign of King Henry the Third, according to the best lights I can obtain in this matter. Yet all the inferior tenants in chief of the king were not comprehended in that representation: for we find by the close rolls, that, in the thirty-fourth year of Edward the First, the tenants *in ancient demesne* came to parliament, and acted therein distinctly from the knights of the shire. It likewise appears by a record, that, in the fifth year of King Edward the Second, they were exempted from contributing to the wages of such knights. (V. Cotton's Abridgement of the Records in the Tower, p. 1.)

BOOK II.

V. Rot. Clauf.
34 Edw. I. m.
15. dorf. in
cedulâ.
& Brady of
Boroughs,
p. 37.
& Tyrell's
Appendix to
Hist. of Eng-
land, p. 174.
175, 176.

I cannot quit this subject without observing, that, although in the abovementioned clause of King John's charter mention is made of the *greater barons*, who were to be summoned to parliament by particular writs, yet the other tenants of the king, who were to be summoned generally, are not there called *lesser barons*; nor do I find *that title* ever given to the *inferior tenants in chief of the king*, in any charter or record. But there are some very ancient, which give the name of *barons* to the principal tenants *under the king's barons*. For instance, the barons of Robert Fitzhaimon earl of Gloucester are mentioned in the charter of King Henry the First to the abbey of Abingdon. "*Sicut designatum fuit per barones ipsius Roberti.*" And Henry de Novoburgo earl of Warwick gave certain lands in that county to the same abbey *in the presence of his barons* (says the grant); one of which *barons*, viz. Thurstan de Montfort, is recorded to have held ten knights-fees under the grandson of that earl.

V. Monasti-
con, tom. i.
p. 106.
Hody's Hist.
of Convocat.
p. 289.
V. Dugdale,
Warwick-
shire, f. 303.
Hody, ut su-
prâ.

In one of the laws of the Norman kings of Sicily are these words: "*Post mortem baronis vel mili-*

tis,

BOOK II. " *tis, qui à comite vel barone alio baroniam aliquam vel feudum tenuerit.*"

L. i. c. 8.

Bracton likewise thus describes the vavassors; or great subvassals: " *Sunt et alii, qui dicuntur vavassores, viri magnæ dignitatis:*" and he ranks them next to the king's barons. These had therefore a better right to the title of *lesser barons* than those who held of the king *in capite* by socage, or by fee-farm; or by a single knight's-fee, or half a knight's-fee; as many did among those who by the above-cited clause in the charter of King John were to have only a *general summons to parliament*. Nor was there any impropriety in such persons representing *the community of the county*, in which they were some of the principal gentlemen, having *curiam de suis hominibus*, courts of their own, as lords of manors, which to this day are called *court barons*.

V. Camden's
Britannia.
Selden's Titles
of Honor, sect.
21. p. 740.

It is said in an ancient manuscript, cited by Camden; that King Henry the Third, " *post magnas perturbationes et enormes vexationes, inter ipsum regem, Simonem de Monteforti, et alios barones motas et sopitas, statuit et ordinavit, quod omnes illi comites et barones regni Angliæ, quibus ipse rex dignatus est breviam summonitionis dirigere, venirent ad parliamentum suum, et non alii, nisi forte dominus rex alia similia breviam eis dirigere voluisset.*"

Upon this I would observe, that here is no mention of *lesser barons*, who might be called to parliament by the king's writs; but the sense of the passage is, that, at the end of the troubles between Henry the Third and his barons (*viz.* after the battle of Evesham), he acquired a power, by act of parliament, to call to his parliaments *such earls and barons of the realm* as he should vouchsafe to send writs to, *exclusively of all others*, who were not to come;

come, *unless he afterwards should send to them the like writs*. Which power was exercised by some of his successors in the persons of the most ancient and greatest barons of the realm. For instance, William de Vesci, the brother and heir of John de Vesci, who had been summoned in the forty-ninth of Henry the Third, *inter majores barones*, was not summoned till the twenty-third of Edward the First, though he was forty years old at John's decease; and, from that year till the sixth of Edward the Second, was never summoned again. Many other instances of the like nature occur in looking over the lists of summons to parliament. And some who had been summoned were totally omitted, and came no more to parliament. This was certainly a very great and extraordinary change of the ancient constitution, which, supposed that the right of advising the king in his great council was inherent in his barons, and not to be taken from them without forfeiture of their baronies. Nothing indeed could have induced them to consent to such a law, but the great disorder into which the whole state had been thrown by a long civil war, in the end of which Henry the Third and his son Prince Edward were victorious, and able to do what they pleased. It is very surprising, that, in times when the strength of the peerage was less awed by that of the crown, the established feudal notions should not have prevailed to the abolition of this law. I must however observe, that with relation to *earls* the power never was exercised; it not appearing that any of these were at any time omitted. And as for those, who, without having any baronies in them, were called to parliament by writs from the crown, the learned author of the *Inquiry into the manner of creating Peers* has said much to prove, that
such

BOOK II. such writs gave them no peerage. He observes, "that, from the forty-ninth of Henry the Third to the twenty-third of Edward the Fourth (from which times the summons have been more regular) not fewer than ninety-eight laymen have been summoned to parliament at one single time, by the very same writs by which the earls and other undoubted barons were summoned, and yet neither themselves, nor any of their name or posterity, were ever afterwards summoned to any parliament or great council." From whence, and from the silence of the house of lords and of the heirs of their several persons, with regard to this omission, and from there being no words in their writs that express any creation of a peerage or barony, he takes it for granted, that they could only be summoned as *assistants* to the house of lords, and as *de consilio regis in parlamento*. This hypothesis would undoubtedly solve many difficulties in this dark part of the History of our ancient constitution, if it could be fully made out. But, in the case of the greater barons, the separating from their peerages the right of voting in parliament, and subjecting it to the arbitrary will of the king, whether it was done by an act of parliament (as the words *statuit et ordinavit*, in the words cited by Camden, seem to imply) or by a mere extension of prerogative, was an innovation very hurtful to the dignity of the peers and to the balance of the government. Some have doubted the authority of the manuscript cited by Camden; and I should give no credit to it, if it were not confirmed by the indisputable practice of all our kings from Edward the First to Richard the Third. It must however be noted, that such omissions in many cases, though not in all, may be well accounted for,

for, from the frequent and necessary absence of many of the peers on the king's service abroad, while the crown had great dominions and almost perpetual wars on the continent. On such occasions the omitting to summon them to parliament was no encroachment on their rights, but a proper exemption from a duty they could not perform. It may also have been done not improperly, according to the notions of those times, when the lands that constituted a barony were seized by the crown for any fault or defect of service, during the life of the baron, or for any number of years: whereas an arbitrary omission of summoning those to parliament, who were willing and able to do their duty there, if it did not extinguish the peerage, deprived it of one of its most valuable privileges; and, if it did extinguish it, rendered the highest property of the kingdom quite precarious and dependant on the will of the crown. But this belongs not to my subject; no such thing having been thought of in the times of Henry the Second, or ever before. What I meant to consider here was only the notion, that *the lesser barons*, or the *barones secundæ dignitatis*, were not *the great subvassals* who held manors under earls or other eminent nobles, but *the inferior tenants in capite of the crown*; a notion espoused by some writers of no small authority, and on which more than one hypothesis has been founded, with no warrant from antiquity, so far as I can discover.

P. 221. *A writ of summons directed to the sheriffs of Bedfordshire and Buckinghamshire, and requiring two knights to be sent for each of those counties, is extant in the close roll of the thirty-eighth year of Henry the Third.*

The

BOOK II.

The words of the writ are these: "Tibi di-
 " stricte præcipimus, quod præter omnes præ-
 " dictos venire facias coram concilio nostro apud
 " Westm. in quindenâ Paschæ prox. fut. 4 legales
 " et discretos milites de comitatibus prædictis, quos
 " idem comitatus ad hoc elegerint, vice omnium et
 " singulorum eorundem; viz. 2 de uno comitatu, et
 " 2 de alio, ad providendum una cum militibus
 " aliorum comitatum, quos ad eundem diem vocari
 " fecimus, quale auxilium nobis in tantâ necessitate
 " impendere voluerint. Et tu militibus et aliis de
 " comitatu prædicto necessitatem nostram, et tam
 " urgens negotium nostrum, diligenter exponas et
 " ad competens auxilium nobis ad præsens impen-
 " dendum efficaciter inducas. Ita quod præfati
 " 4 milites præfato concilio nostro ad prædictum
 " terminum Paschæ respondere possint super præ-
 " dicto auxilio *pro singulis comitatibus prædictorum*,"
 &c. Dr. Brady supposes that this was not a sum-
 mons to a general council; but Dr. Hody calls it
 a parliament, and I think with good reason. For
 M. Paris says, *congregati sunt iterum Angliæ mag-
 nates Londini*. The word *iterum* refers to the pre-
 ceeding council, held the same year, sexto Calend.
 Februarii, which the same author calls *parliamen-
 tum*. But in reality this point is not worth dis-
 puting. For if, at this time, the knights of the
 shires were summoned to the lesser councils, they cer-
 tainly were to the greater. It is observed by Dr.
 Brady, that the date of the writ was soon after the
 breaking-up of a general council. And so it well
 might, because that general council had denied the
 king aid, and therefore it was necessary to sum-
 mon another as soon as possible. He also objects,
 that there are two other parts of this writ, the last
 of which is a command to the sheriff to levy all
 debts that were due to the king, &c. *A clause not*

See Brady's
 Introduction
 to his Hist.
 vol. I. from
 p. 212 to 215.
 See Hody,
 p. 341.
 V. M. Paris,
 sub ann. 1253.
 p. 595. & ad-
 ditam. p. 123.
 P. 492. ibi-
 dem.
 See also Hody,
 p. 338.

to be found in parliament-writs. But this, at most, proves only, what I shall not dispute, that the form of these writs was not then so precisely determined, as not to admit of occasional variations. Nor does the coupling of other things with a summons to parliament make it no summons.

Ibid. And there is a clause in the great charter of the ninth of the same king, whereby it is declared, that, together with the spiritual and temporal lords, other inferior freeholders, et omnes de regno, by which words I understand the whole commonalty of the realm, granted to the king the fifteenth part of all their moveable goods, in return for the liberties accorded to them in that charter.

The words in the original are these: "Pro hac autem concessione et donatione libertatum istarum et aliarum libertatum contentarum in cartâ nostrâ de libertatibus Forestæ, archiepiscopi, episcopi, abbates, priores, comites, barones, milites, libere tenentes, ET OMNES DE REGNO NOSTRO, dederunt nobis quintamdecimam partem omnium mobilium suorum." The words *milites, libere tenentes, et omnes de regno nostro, dederunt nobis*, &c. coming after *barones*, &c. seem to declare very plainly, that the whole commonalty of the kingdom had concurred with the nobility in granting this tax to the king, as a return for the charter. Dr. Brady, to elude the force of the proof against his hypothesis, is obliged to contend, that *dederunt* in this place signifies *paid*, and not *granted*. But Dr. Hody observes rightly, that this conjecture appears to be false, from this consideration, *that the charters were drawn up in the parliament itself wherein the subsidy was granted, and sealed long before the money could be paid*. He adds, "it cannot be supposed that *omnes de regno* were present

See Hody's
Hist. of Com.
vol. p. 303.

BOOK II. " in that parliament, so as to grant the subsidy in
 " their own persons; but they did it either *per se*,
 " or *by their representatives*." How these words
 were understood by Henry de Knighton, who
 wrote his History little more than a century after-
 wards, will appear from this passage, in his ac-
 count of the reign of Henry the Third: " Post
 " hæc Rex Henricus concessit *magnatibus terræ*
 " duas chartas, unam de Forestâ, et aliam de liber-
 " tatibus, propter quam causam *communes regni*
 " concesserunt quintadecimam partem omnium
 " bonorum suorum *mobiliū et immobiliū*." The
 two last words are a mistake, being not agree-
 able to the charter: but the words *communes regni*
 are a clear explanation of the *omnes de regno* in the
 charter. As for the expression *rex concessit magna-*
tibus terræ duas chartas, it must not be understood
 as excluding the commons out of that grant; for
 the contrary appears by the charter itself: but
magnatibus is here a general term, that comprehends
 the whole parliament; as it certainly does in many
 other passages of our ancient historians. And we
 have in the Cotton library a manuscript chronicle
 of Walter de Coventry, who lived and wrote un-
 der the reign of Henry the Third, which, in
 giving an account of this parliament, says, " Ibi-
 " dem *concessa* est D. regi a comitibus, et baroni-
 " bus, et clero *et populo*, quintadecima omnium
 " bonorum." But what will better determine the
 true sense of this clause, is the following passage in
 a record of the thirty-seventh of that king: " No-
 " verint universi, quod D. H. rex Angliæ illustris,
 " R. Comes Norff. et Marechallus Angliæ, H.
 " Comes Hereford et Essex. J. Comes de War-
 " wico, P. de Sabaudia, *ceterique magnates An-*
glia, consenserunt in sententiam excommunica-
 " tionis generaliter latam apud West. tertio deci-
 " mo

See Tyrrel's
 App. p. 21.
 vol. v.

See Petyt,
 Right of the
 Comm. App.
 p. 164.
 Hody's Hist.
 of Convoc.
 p. 335, 336.

“ mo die Maii ann. regis prædicti 37, in formâ BOOK II.
 “ scil. quod vinculo præfatæ sententiæ ligentur
 “ omnes venientes contra libertates contentas in car-
 “ tis communium libertatum Angliæ, et de Forestâ,
 “ &c. Sciendum autem quod si in scriptis super
 “ eadem sententia à quibuscunque confectis, seu
 “ conficiendis, aliud vel aliter oppositum vel ad-
 “ jectum fuerit, aut articuli aliqui alii in eis con-
 “ tenti inveniantur, D. rex, et prædicti magnates
 “ omnes, et communitas populi, protestantur pub-
 “ lice in præsentia venerabilium patrum B. Dei
 “ gratia Cant. arch. totius Angliæ primatis, nec
 “ non et episcoporum omnium in eodem colloquio
 “ existentium, quod in ea numquam consenserunt
 “ nec consentiunt, sed de plano eis contradicunt.”

This *colloquium* is called, by Matthew of West-
 minster, *magnum parliamentum*. And surely the
communitas populi being thus named in addition to, V. Rot. Par.
 and distinct from, the *magnates omnes*, is a very 37 H. III.
 strong evidence, added to the others before men- m. 1a. dorso.
 tioned, that the commons were present, and acted
 together with the nobles in this parliament, two
 years before the time assigned by Brady for their
 first coming to those assemblies. That difference in-
 deed would be small, if it did not affect the whole
 foundation upon which his hypothesis stands, viz.
that this innovation was the consequence of Simon de
Montfort's victory at the battle of Lewis, and the
captivity of the king.

Ibid. Nor can I discover, in the history of those
 times, any reason sufficient to render it probable,
 that so great an alteration should then have been
 made in the constitution of England.

It by no means appears, that, under the go-
 vernment of King Henry the Third, either the

BOOK II. feudal powers of the nobility over the commons were more relaxed than they had been during the reigns of Henry the Second or Henry the First; or that the condition of citizens and burgesses had been mended by any increase of trade and commerce; or that the freeholders in the counties had been raised any higher, by an augmentation of wealth, or extension of privileges, which could open the way to such a change. Nor was trade or commerce esteemed *more honorable* in the age of Henry the Third than in that of his grandfather, or during the government of the Saxons. On the contrary, the disposition and temper of the times, as well as the genius of the government, were more unfavorable to trade in the Norman times than the Saxon; and the state of England, during the period from the death of Henry the Second till that of Henry the Third, was more turbulent, more distempered, and more unfriendly to the increase of the national industry, or any enlargement of our commerce, than under the moderate and prudent administrations of the two former Henries.

P. 223. *We know indeed that some boroughs, which, from their poverty, were unable to bear the expence of sending members to parliament, declined the use of that privilege.*

See Browne
Willis, vol. I.
p. 149.

There are some instances of boroughs that petitioned to be restored to the use of that privilege after a very long interruption. Thus, in the reign of James the First, Agmondesham, Wendover, and Great Marlow, alledged, by petition to the house of commons, that the interruption of their sending burgesses, *for four hundred years past*, was not owing to their own neglect, but to the fault of the sheriffs; or, if it was owing in any measure

to the burghs themselves, it was because their predecessors were poor and unable to maintain their members; whereas now they were content to undergo that charge. BOOK II.

On this I would observe, that, as they had not complained before, in so long a period of time, it is probable, that it was not *the neglect of the sheriffs, but their poverty and inability to bear the charge of sending members to parliament*, which had occasioned so long an interruption of their right. Their petition was allowed, by the commons and the king, as it appeared that they were parliament burghs *by prescription*, not by charter.

P. 224. *Among the close rolls of the twenty-fourth year of that king, there is a writ of summons to parliament, in which it is asserted, not as an innovation introduced by the earl of Leicester, but a maxim grounded on a most equitable law, established by the foresight and wisdom of sacred princes, that what concerned all should be done with the approbation of all, and that dangers to the whole community should be obviated by remedies provided by the whole community.*

The words are these: "*Sicut lex justissima, pro-* Rot. Claus.
"*vidâ circumspetione sacrorum principum stabilita,* 24 Edw. I.
"*hortatur, ut quod omnes tangit ab omnibus approbetur,* m. dorso.
"*sic et innuit evidenter, ut communibus periculis per-*
"*remedia provisâ communiter obvietur.*" If the earl of Leicester had been the first who applied this maxim to the constitution of English parliaments or great councils, it would have been impossible for Edward the First to have grounded it on a law *providâ circumspetione sacrorum principum stabilita*. Nor could he have used that expression, if he himself, or his father, had introduced the practice of summoning the commons to those assemblies.

BOOK II. Ibid. *Some very eminent writers have supposed, that none but the king's inferior tenants in chief were at first represented by the knights of the shires; but there is no sufficient evidence to support that opinion.*

See Spelman
of Parliam-
ents, p. 64.

Sir H. Spelman and other writers have dated the original of knights of the shires from one of the clauses in King John's Magna Charta, which directs that the inferior tenants in chief of the crown should be summoned to parliament *in general*. But that those words do not import any *representation*, I have endeavoured to shew in a former note to this volume: nor does it appear by other evidence, either of records or of history, that, in consequence of that clause, *such tenants in chief* were at any time the *sole electors of knights of the shires*, or *that only such tenants in chief could be elected*. Sir H. Spelman indeed adds, "that other freeholders, because they
" could not always be distinguished from them that
" held *in capite* (which encreased daily), grew by
" little and little to have voices in the election of
" the knights of the shires, and to be at last con-
" firmed therein by the statute 7 Hen. IV. and 8
" Hen. VI." But how does he shew that there ever was a time, when knights of the shires were elected by the *tenants in capite*, without the voices of other freeholders? He supposes the point which should be proved. For that under the reigns of King John and Henry the Third, when he thinks that such elections began to be made, other freeholders came to the county-court, is most certain.

See Keble's
Statutes,
7 Hen. IV.
c. 15.

If we consider the statute of the seventh of Henry the Fourth, which is the oldest in our books that regulates or directs the form of county elections, we shall find it was made (as the preamble

preamble declares) *at the grievous complaint of the commons in parliament of the undue election of the knights of counties for the parliament, which be sometimes made of affection of sheriffs, and otherwise, against the form of the writs directed to the sheriff, to the great slander of the counties, and hindrance of the business of the commonality in the said counties, &c.* All the regulations laid down in it appear designed to prevent abuses arising from the partiality of the sheriffs, or other undue influence used in elections; not to make or to confirm any change in the qualifications or rights of the electors. The enacting part of it says, “ Our sovereign Lord the King, *willing therein to provide remedy,* “ *by the assent of the lords spiritual and temporal,* “ *and the commons in this present parliament* “ *assembled, hath ordained and established, that* “ *from henceforth the elections of such knights* “ *shall be made in the form that followeth: (that* “ *is to say) at the next county to be holden after* “ *the delivery of the writ of the parliament, pro-* “ *clamation shall be made in the full county of the day* “ *and the place of the parliament, and that all they* “ *that be there present, as well suitors duly summoned* “ *for the same cause, as others, shall attend to the* “ *election of the knights for the parliament, and then* “ *in the full county they shall proceed to the elec-* “ *tion freely and indifferently, notwithstanding any* “ *request or commandment to the contrary,*” &c. What follows concerns only the return of the writ; and neither in the part above-recited, nor in any subsequent clause, is there a word that denotes any intention in the legislature to encrease the number of electors of knights of the shires, in prejudice to the right of the king’s tenants in chief, or that gives the least intimation of any such right having been ever in those tenants exclusive of others

BOOK II.

who were suitors to the county-court and present therein. All the freeholders were so from the earliest times: and that the substance of this law was no more than *an affirmation of an old right and custom*, appears from the preamble of the subsequent act made in the eleventh of the same king, which says, that "whereas in the parliament holden at Westminster, the seventh year of the reign of our said Lord the king, there was ordained and established by a statute *for the preservation of the liberties and franchises of the election of the knights of the shire used through the realm*, a certain form and manner of the election of such knights, as in the said statute more fully is contained," &c. There can be nothing more different from the communicating of a liberty and franchise to persons not entitled to it before, than the preservation of liberties and franchises used through the realm in elections. The act of the eighth of Henry the Sixth, instead of enlarging, restrains the number of electors. It enacts, that those knights shall be chosen in every county *by people dwelling and resident in the same counties, whereof every one of them shall have land or tenement, to the value of forty shillings by the year at the least, above all charges*: which is explained in a subsequent act, of the tenth of the same king, to mean *freeholds of that value within the county for which the election is to be made*. And the reason why this was done is set forth in the preamble: *Whereas the elections of knights of shires to come to the parliaments of our Lord the King, in many counties of the realm of England, have now of late been made by very great outrageous and excessive numbers of people, dwelling within the same counties of the realm of England, of which most part was of people of small substance and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made,*

made; with the most worthy knights and esquires dwelling within the same counties; whereby man-slaughter, riots, batteries, and divisions among the gentlemen, and other people of the same counties, shall very likely rise and be, unless convenient and due remedy be provided in this behalf: our Lord the King, considering the premises, hath provided, ordained, and established, by authority of this present parliament, &c. BOOK II.

It is amazing that any person, who had ever read this statute, or that of the seventh of Henry the Fourth, should say, as St. Amand does in his Historical Essay on the Legislative Power of England, p. 187. that *none but the immediate tenants of the crown (the lesser barons) came to the county court, and none other had votes till, by the 8 H. VI. c. 7. all freeholders of 40s. per annum had that right given them.* The very reverse of all this appears by the statute he refers to: it gives no right to freeholders of 40s. per ann. which they had not before; but excludes all those who had freeholds under that value. The words, *whereas the elections of knights of shires in many counties of England have now OF LATE been made by very great, outrageous, and excessive numbers of people, and whereof every of them PRETENDED a voice equivalent with the most worthy knights and esquires dwelling within the same counties,* shew beyond contradiction, that the intention of the legislature in enacting this statute was not to alter the constitution and usage of the kingdom, with respect to elections for the shires, but to remedy a recent abuse and innovation, grounded (as they thought) on unjustifiable pretensions. It seems pretty evident, that the practice of parcelling out land in small portions, and thereby multiplying freeholds inferior in value to what they had usually been in former times, produced this complaint of *very great, outrageous, and excessive numbers of people,* who

BOOK II. *who were of small substance and of no value, coming to these elections.* But it is certain, that this law and that of the tenth of the same king were *restrictive*, instead of giving a right of voting to any freeholders who did not before enjoy that franchise.

V. Appendix
to the first
volume.

That *none but the immediate tenants of the crown (the lesser barons) came to the county-court before the eighth of Henry the Sixth* (as the same author asserts,) is a most false and unwarranted proposition. I have given, in the Appendix to the first volume of this History, a charter of Henry the First, relating to the manner of holding county-courts, in which it is said by that king, “*Et volo et præcipio, ut omnes de comitatu eant ad comitatus et hundreda, sicut fecerint tempore regis Edwardi.*” And in another clause he says, “*Et si modo exurgat placitum de divisione terrarum, si est inter barones meos dominicos, tractetur placitum in curiâ meâ: Et si est inter vavassores duorum dominorum, tractetur in comitatu.*” The vavassors therefore were suitors to the county-court, and all the freeholders of the county, *omnes de comitatu*, were required to go thither, as they had done in the time of Edward the Confessor. Nor does it appear that any alteration was made in this point by any subsequent law. In the above recited statute of the seventh of Henry the Fourth, *all that are present in the county-court, as well suitors duly summoned for the same cause, as others, are commanded to attend to the election of the knights for the parliament.* And that, before the making of this law, the vavassors, or *mesne tenants*, who did not hold their lands directly of the king, might not only concur in the elections of knights of the shires, but be themselves *elected*, seems evident from the words of Chaucer, in the description of his *Franklin*.

“ At

“ At sessions was he lord and sire,
 “ Full oftimes was he *knight of the shire*;
 “ A sheriff had he been and a coronour,
 “ Was never such a worthy *vavassour*.”

Yet it must be observed, that, to qualify any person for being elected, the mere possession of a knight's-fee was not sufficient; but it was necessary that he should be *miles gladio cinctus*, that is, knighted according to the forms then in use. By an act of the first of Richard the Second, all who had lands to the value of twenty pounds yearly in fee, or for term of life, were obliged to receive the order of knighthood. And this law seems to have been founded on a more ancient custom. For there are writs of Henry the Third, commanding the sheriffs to summon to the county-courts all who held one knight's-fee, or less than a whole knight's-fee, *dum tamen de tenemento suo, tam militari quam socagio, possint sustentari*, that they might be there made knights. There is also an act of 23 Hen. VI. c. 15. which says, “ *the knights of the shires shall be notable knights of the same counties for the which they shall be chosen, or otherwise such notable esquires, or gentlemen born, of the same counties, as shall be able to be knights: and no man to be such knight, which standeth in the degree of a yeoman, or under.*”

See Cotton's
 Abridgement
 of the records
 in the Tower,
 13 Edw. III.
 p. 18, 19.
 V. Rot. Clauf.
 24 Hen. III.
 m. 8. dorso. &
 26 Hen. III.
 m. 6.

In this law *the ability of being made a knight*, that is, the having freehold sufficient to qualify them for it, is admitted, instead of the actual order of knighthood required by the old writs: and yeomen, with all under that degree, are excluded, agreeably, I presume, to ancient usage: but in no statute relating to the knights of the shires is there the least intimation of it's being required that they should be *tenants in capite of the king*, or of the usage having been altered with regard to that point.

The

BOOK II.

The next circumstance I shall consider belonging to this matter is the wages paid to the knights. It must be granted, that, if by virtue of the above-mentioned clause in King John's Magna Charta, or by any subsequent statute or custom introduced in the time of Henry the Third or Edward the First, such knights were elected *by tenants in capite of the king, exclusively of all others*, and represented *them alone*, no others could be charged with the payment of their wages. But in one of the parliament rolls of the fifty-first year of Edward the Third, n. 45. the commons petition the king, that the said expences be levied *of all the commons of the counties, as well within franchises as without; except the franchises of cities and boroughs, and except those who come to parliament by writs of summons, and their tenants who hold in bondage*. The words in the record, which I have examined, run thus: *Que plaise au roy nostre seigneur que soit ordeine a ceste present parlement, que les dites despenses soient levez de toutz les communes des dites comtees, si bien deinz franchises come dehors; forspris de la franchise des citees et burghs, et forspris de ceux qui viegnent icy par brief a parlement, par summonce, et de leurs tenants qui tiegnent en bondage*. Of the preamble to this petition, which is very remarkable, I shall have occasion to take notice in a subsequent note. It will be enough to add here, that the answer of the king is, *soit fait come devant a esté usé en ce cas*. Which was the proper answer, because no exception was made in this petition to tenants in ancient demesne, or in gavelkind, who appear by other records to have been intitled to an exemption from these expences; and therefore the king would neither wholly reject, nor wholly grant the demand. But it was impossible that the commons could have made it so general, if the right of election for counties had in those days been

See the records in the Tower.

been confined to *tenants in chief of the king*. And it BOOK II. is not pretended by Spelman, or any other writer, that it was extended or enlarged in the reign of any king between Henry the Third and Edward the Third inclusively. It seems to me, therefore, that this roll contains a strong evidence against the notion that the electors of knights of the shires were anciently none but the *tenants in capite*, called by some modern authors *lesser barons*.

One of the most striking arguments used by Dr. Brady to support that notion, is the manner of electing the commissioners for the shires in the kingdom of Scotland, where, by an act made in the year 1427 (the twenty-third of James the First), the *small barons* and *free tenants, who held of the crown in capite*, were discharged from coming to parliaments, and allowed to chuse commissioners to serve in their stead. This law was confirmed in the year 1587, by an act of James the Sixth, wherein it is declared, that none shall have votes but such as have forty shillings land in free tenendrie *bolden of the king*. The permitting of the inferior tenants in chief to come to parliament by representatives, instead of a personal attendance, I believe to have been done (as many other things were in Scotland) after the example of England; but the excluding of all *not holding of the king* from such elections seems to have arisen from a policy, which had before rendered the government and constitution of Scotland very different from ours in many respects. For (whatever conformity there was between them in the times of which I write) it is certain, that, from the reign of Alexander the Third to that of James the First, the *aristocratical power* in the state of that kingdom had continually increased, and prevailed over the *popular* far more than in England. No just or conclusive inference can

BOOK II. can therefore be drawn from this circumstance in those laws, to prove by analogy, that no freeholders, but tenants in chief of the crown, had anciently a right to elect the representatives of English counties.

P. 225. *There is not in any of those writs, nor in the oldest we have for sending up representatives from cities or boroughs, the least intimation, that such elections were a novelty then introduced.*

The words of the writ directed to the sheriff of Bedfordshire and Buckinghamshire, in the thirty-eighth of Henry the Third, which is the oldest now remaining, have been recited in a former note to this book. The next for knights of the shires, which is of the forty-ninth of the same king, runs thus: "Item mandatum est singulis vicecomitibus per Angliam, quod venire faciant duos milites de legalioribus et discretioribus militibus singulorum comitatum ad regem London. in Octabis prædictis *in forma supradicta.*" The writ, which contains the form here referred to, is lost. To the cities and boroughs we have one in these words: "Item *in forma prædicta* scribitur civibus Ebor. civibus Lincoln. et cæteris burgis Angliæ; quod mittant *in forma prædicta* duos de discretioribus et legalioribus et probioribus tam civibus quam burgenfibus suis." The form here referred to may probably have been that of a writ of summons sent to the city of London, and now lost. For *that* was the most proper to be enrolled as a pattern for all the other writs to the cities and boroughs, *mutatis mutandis*. And it must be observed, that, in this abridgement or minute, York and Lincoln are particularly named, but London is not; which seems an evident proof, that the writ directed to that city was kept on the rolls, and therefore

therefore it was not thought necessary to enter the **BOOK II.** others, which were in the same form. The words *et cæteris burgis Angliæ* seem to shew, that the boroughs which sent members to parliament were well known: but, if none had ever sent any before this time, so general a mention of them would hardly have been made. It appears, that the Cinque Ports were summoned distinct from the others; and the writ to Sandwich only was entered on the rolls with a *similiter mandatum est singulis portubus pro se*. Probably, that to London was in much the same form. The cause of their summons is there declared to be *tam pro negotio liberationis Edwardi primogeniti nostri quam pro aliis communitatem regni nostri tangentibus*. It is directed thus: *Rex baronibus et ballivis portis sui de Sandwico salutem*. And the precept is, *Vobis mandamus, in fide et dilectione quibus nobis tenemini, firmiter injungentes, (ut) omnibus aliis prætermiſſis mittatis ad nos ibidem quatuor de legalioribus et discretioribus portus vestri, ita quod sint ibid. in Octab. prædictis nobiscum, et cum præſatis magnatibus regni nostri tractatum et super præmiſſis consilium impensuri. Et hoc, sicut bonorem nostrum et vestrum et communem utilitatem regni nostri diligitis, nullatenus omittatis*. But further we find, that in the writs for the expences of knights of the shires, in the twenty-eighth year of Edward the First, which are the first of that reign remaining on the rolls, it is said, that "the county should pay them, *prout alias in casu consimili fieri consuevit*;" words which imply a custom. It must indeed be observed that the writ of the forty-ninth of Henry the Third has not these words. Mr. Tyrrel supposes, that they were left out by the negligence of the clerks: but a better reason may be assigned from the writ itself. For there

V. Rot. Claus.

28 Edw. I.

m. 12. dorso.

Tyrrel's Ap-

pendix to his

History, p. 60,

61.

& Bibliothec.

Polit. Dial.

viii.

V. Rot. Claus.

49 Hen. III.

m. 10. dorso.

See also Bra-

dy's Answer

to Petyt,

p. 140.

it

BOOK II. it is said, that the expences of the knights had been very great, because their attendance had been longer than they had expected; but that, the counties having before contributed largely to other public expences for the defence of the kingdom, they should not be charged to this too highly. “Cum
 “nuper vocari fecimus duos de discretioribus militibus singulorum com. &c. ac iidem milites moram
 “diuturniorem quam credebant traxerint ibidem, propter quod non modicas fecerint expensas; cumque
 “communitates comitatuum dictorum varias hoc anno fecerint præstationes ad defensionem regni nostri &c.
 “per quod aliquantulum se nimium sentiunt gravari, tibi præcipimus quod duobus militibus, qui pro
 “communitate dicti comitatus præfato parlamento interfuerunt, de consilio quatuor legalium militum ejusdem comitatus, rationabiles expensas suas
 “in veniendo ad dictum parlamentum, ibidem morando, et inde ad partes suas redeundo provideri facias, et eas de eadem communitate levare facias, proviso quod ipsa communitas occasione
 “præstationis istius supra modum non gravetur.” It is very probable, therefore, that, as the expences of the knights of the shire had been greater than usual, and the king was unwilling to load the counties, which had been so much burthened before, with too heavy a charge, the words *prout alias in casu consimili fieri consuevit* were on purpose left out, as no proper rule to proceed by in this case.

See Brady's
 Answ. to Pe-
 ryt, p. 141.
 from the
 Claus. Rot.
 42 H. III.
 m. 1. dorso.

Dr. Brady has given us a writ of expences allowed to four knights of each county in the kingdom, for attending upon a parliament in the forty-second year of Henry the Third, not as members thereof, but on an extraordinary commission of inquest into all excesses, transgressions, and injuries done and committed by justices, sheriffs, bailiffs,

or

or any other persons within the said counties. No sum is fixed; but they are to have *rationabiles expensas suas in eundo, redeundo, et in prefato parlamento pro dictis negotiis morando*. This is a very extraordinary writ, and, as far as I can discover, the single one of the kind that ever was granted. Yet from hence Dr. Brady supposes, that the words *prout alias in casu consimili fieri consuevit* got into ancient writs for the expences of knights, citizens, and burgesies: a strange supposition! it being far more likely, that the form of this writ, sent on a particular occasion, was taken from those, than that this was the precedent upon which they were grounded.

As for the two clauses in King John's charter concerning the manner of levying aids and scutage, I cannot think they conclude any thing with regard to this matter; the first of them saying only, that no scutage or aid should for the future be imposed but by the common council of the kingdom; and the other declaring in what manner the greater and lesser tenants in chief of the king should be summoned on such occasions. How does it appear, that the latter was intended, as some have supposed, to enumerate *all the members of parliament, all entitled to sit there?* If there was no dispute at that time about the method of summoning the representatives of counties, cities, and boroughs, there was no need of mentioning any of them in that clause, which is not the description of a parliament or common council of the kingdom, but a declaration in what manner, and by what kind of summons, certain members thereof, viz. those who held of the king, should be called to the parliament, for the imposing of scutage or other aids.

In the roll of the 51 Edw. III. n. 45. part of which I have cited in a former note to this book, See the records in the Tower of London.

BOOK II. find these words: "Pourceque, *de commune droit du royaume, de chascun comté d'Engleterre sont et seront eleus deux personnes d'estre à parlement por le commune de dits comtés.*" Now, if, as this record testifies, two persons were to be elected to parliament for the commonalty of every county *by the common law of the realm, de commune droit du royaume*, we must look for the beginning of this law, or usage, in much more ancient times than the reign of King Henry the Third, even in the earliest institutions of the Anglo-Saxon government. This expression seems to me of very decisive importance, as to the question before us.

Ibid. But some writs are taken notice of by Mr. Tyrrel, a diligent searcher into records on this subject; which set forth a claim of certain tenants in ancient demesne, before the fifteenth year of Edward the Second, that they ought not to be charged with wages to knights of the shire; forasmuch as they and their ancestors, tenants of the same manor, had, from time beyond memory, been always exempted, by custom, from the expences of knights sent by the community of their county to the parliaments of the king, and of his royal progenitors.

V. Appendix
to the second
part of his
third volume
of the Hist. of
England, p. 60,
61.

The words are, as cited by Mr. Tyrrel: "Quod licet ipsi et eorum antecessores tenentes de eodem manerio de F. (quod est de antiquo dominio coronæ Angliæ) a tempore quo non extat memoria semper hactenus quieti esse consueverunt de expensis militum ad parlamenta nostra, et progenitorum nostrorum regum Angliæ, pro communitate dicti comitatus venientium," &c. Mr. Tyrrel gives in English the rest of the writ, which goes on thus: "That whereas the sheriff distrains the said tenants to contribute to the expences of the knights that came to the last parliament, to their great
" damage,

" damage, otherwise than had been accustomed in BOOK II.
 " all times past (*omnibus temporibus retroactis fieri*
 " *consuevit*), therefore the king commands him
 " that he desist from his said distress, and do not
 " compel the said tenants to contribute otherwise
 " *quam omnibus temporibus retroactis*" &c. After
 which he adds, " Now, though this writ be en-
 " tered without any king's name, or date, yet it
 " appears at the bottom, that it was issued out by
 " G. L'Escrope then chancellor, and William de
 " Herlston, clerk of the chancery; and this must
 " have been before the fifteenth year of Edward
 " the Second, because it appears by the close rolls
 " of that year (Rot. Claus. 15 Edw. II. m. 37.
 " dorf. in scedulâ), that in December the great
 " seal was delivered to William D. Ayremyn, un-
 " der the seals of William de Clyffe, and the said
 " William de Herlston, clerks of Chancery, who
 " are often mentioned in our records to have been
 " keepers of it *pro tempore*, till the second year of
 " Edward the Third, when the said William de
 " Herlston had the sole custody thereof committed
 " to him. There are other writs of this kind upon
 " the close rolls, as particularly one directed to Sir
 " John de Cobham, and four other knights there-
 " in named, reciting, " That whereas Simon,
 " archbishop of Canterbury, claims as well for
 " himself as his predecessors, and their tenants
 " hitherto, *a tempore quo non extat memoria*, cer-
 " tain lands held in *gavelkind* in the county of
 " Kent, which ought to be free from the expences
 " of knights coming to the parliaments of that
 " king, as well as those of his progenitors; and
 " then it concludes with a *superfedas* to the said
 " sheriff, not to molest the said tenants until such
 " time as the king be further informed, and that

Claus. 50
 Edw. III.
 par. ii. m. 19.
 dorso.

BOOK II.

“ he, by the advice of his council, had ordained what is to be done in the premisses.” From both these writs we may draw these conclusions, first, that there was, at the time of the granting these writs, a claim by *prescription* time out of mind, allowed for all tenants in ancient demesne, as also for those who held of the archbishop in *gavelkind*, to be exempted from contributing to the wages of knights of the shire, or else these petitions and the writs upon them had been to no purpose; for you must note, that all tenants in *ancient demesne* and in *gavelkind* were made so before the Conquest, and therefore might well plead a *prescription*: and, were it not that I should be tedious, I could cite *several other writs of this kind*, as also pleas of certain towns to this purpose, and that not long after the time Dr. Brady supposes the commons were again summoned to parliament.”

P. 226. *With regard to cities and boroughs, there are likewise extant two claims, made in the reigns of Edward the Second and Edward the Third, the proceedings upon which seem decisive of the sense of that age concerning the antiquity of the custom of citizens and burgesses coming to parliament, and from towns that were held under subjects, not immediately of the crown; I mean the claims of the towns of St. Albans and Barnstable, &c.*

V. Madox's
Hist. of the
Excheq. c. 17.
p. 521.

The claim of the town of St. Albans, here mentioned, is transcribed at length by Mr. Madox, in his History of the Exchequer, from the parliament rolls of the eighth year of King Edward the Second, and it will be proper to give a transcript of it here.
“ Ad petitionem burgensium villæ de S. Albano,
“ suggerentium

“ suggerentium regi, quod licet ipsi teneant vil-
 “ lam prædictam de rege in capite, et ipsi, sicut BOOK II.
 “ cæteri burgenſes regni, ad parlamenta regis,
 “ cum ea ſummoniri contigerit, per duos combur-
 “ genſes ſuos venire debeant, *prout totis retroactis*
 “ *temporibus venire conſueverunt*, pro omnimodis ſer-
 “ vitii regi faciendis; quæ quidem ſervitia iidem
 “ burgenſes et antecellores ſui burgenſes villæ præ-
 “ dictæ, tam tempore domini Edwardi nuper re-
 “ gis Angliæ, patris regis, et *progenitorum ſuorum*,
 “ quam tempore regis nunc, ſemper ante inſtans
 “ parlamentum, ut præmittitur, præſtiterunt.
 “ Nomina quorum burgenſium ſic pro dictâ villâ
 “ ad parlamenta regis venientium in rotulis cancel-
 “ lariæ ſemper irrotulata fuerunt. Nihilominus
 “ vicecomes regis comitatûs Hertfordiæ, ad pro-
 “ curationem et favorem abbatis de Sancto Albano
 “ et ejus conſilium, burgenſes prædictos præmu-
 “ nire, ſeu nomina eorum, prout ad ipſum per-
 “ tiquit, retornare, ut ipſi ſervitium ſuum prædit-
 “ tum facere poſſent, penitus recusavit, in con-
 “ temptum regis et burgenſium prædictorum præ-
 “ judicium, et exheredationis periculum mani-
 “ feſtum, ſuper quo petunt remedium oppor-
 “ tunum. “ R. eſt per conſil.

“ Scrutentur rotuli &c. de canc. ſi temporibus
 “ *progenitorum regis* burgenſes prædicti ſolebant ve-
 “ nire, vel non; et tunc fiat eis ſuper hoc juſtitia,
 “ vocatis evocandis ſi neceſſe fuerit.”

A great deal has been ſaid by ſeveral learned wri-
 ters about this record; and indeed the matter of it
 is extremely important, with regard to many points
 in the diſputes that have ariſen about our ancient
 conſtitution. Dr. Brady, being deſirous to elude
 the force of it againſt the hypotheſis which he had
 laid down (viz. that no burgeſſes were ſummoned
 to parliament before the forty-ninth of Henry the

See Petyt,
 Brady, Tyr-
 rel, and others.

V. Brady's
 Anſw. to Pe-
 tyt, p. 38.

BOOK II.

Third), says that those of St. Albans, as appears by the words of their petition to the council, claimed not, nor prescribed to come to parliaments merely as from a borough, but as from a town that held in chief of the king; and this service was incident to their tenure, and was such as the king's progenitors had accepted in lieu of all services due by reason thereof. Now, though we should admit all this to be true, it still proves against him, that some burgeses came to parliament before the forty-ninth of Henry the Third, viz. *all who held in chief of the king*: for the progenitors of the Father of Edward the Second must at least mean his grandfather and great grandfather King John and King Henry the Second: and a long usage is implied in the words *prout totis retroactis temporibus venire consueverunt*. Yet it seems to make good another part of this system, viz. *that none but tenants in chief were members of parliament*. Let us then consider how far that inference from it can be maintained. To render it conclusive, we must suppose, that, if in fact the burgeses of this town were not tenants in chief, they could not have been admitted to come to parliament, either at any time before, or soon after this time. But it appears from the close rolls, that expences were allowed to burgeses of St. Albans for coming to parliament in the thirty-fifth year of Edward the First, and with the clause *prout alias in casu consimili fieri consuevit*, which implies an old custom. We find, indeed, by a writ to the sheriff of Hertfordshire, in the fifth year of Edward the Second, that a dispute then arose, whether the town was a borough, or not, and that the abbot and bailiffs were summoned to Chancery upon that question; but it was not determined till the eighth year of that king, in consequence of the petition recited above. And though no other answer appears in that record, than that the rolls should

V. Rot. Claus.
35 Edw. I.
m. 14. dorso.

should be examined, to see whether the burgesses BOOK II.
 used to come to parliament in the times of the king's progenitors, it may be concluded, that, upon the examination, judgment was given for them; Rot. Claus.
 because there is a writ on the close roll of the 8 Edw. II. m.
 eighth year of Edward the Second, for paying 13. dorfo.
 wages at the rate of two shillings a day to two bur- Rot. Claus.
 gesses of St. Albans; and another of the same nature 2 Edw. III.
 on the close roll of the second of Edward the m. 16. dorfo.
 Third. And in the first year of the same reign Pro expens.
 there are letters patent confirming a certain inden- burgenhum.
 ture, between the abbot of St. Albans and the bur- Rot. Pat.
 gesses of that town, wherein there is contained a 1 Edw. III.
 final agreement of all quarrels and disputes between m. 28. p. 2.
 the said abbot and burgesses; and the abbot does there acknowledge, that the said burgesses, whose names are there particularly set down, might chuse from among themselves two burgesses to go to every parliament; "*Puissent d'eux-memes elire deux burgois d'aler au chacun parlement.*" All these records I have carefully examined myself in the originals at the Tower.

It is therefore very evident, that the right of the town of St. Albans to send representatives to parliament, according to their petition, was allowed by the council of King Edward the Second, and by that of his son; nay, by the abbot himself, who had first disputed that privilege. And yet it is certain, that the burgesses *held of the abbot and not in chief of the king*. We are informed by Mr. Madox, that, in Domesday-book, the town of St. Albans is placed among other towns and lands of the abbeys, in these words, *terra ecclesie S. Albani*. He further says, "I cannot find, by any of the most ancient Revenue-rolls (though I have searched many of them purposely upon this matter), that it was a demefne-town belonging to the king,

See Madox's
Hist. of the
Exchequer,
p. 522. c. 17.

BOOK II.

“ or rendered to the king (when the *sedes abbatiatus* “ was full) any farm, aid, tallage, or other duty, “ as all the rest of the king’s towns did, from time “ to time. A sure token that the townsmen *did not* “ *bold it immediately of the king.*” What then be- comes of Dr. Brady’s hypothesis, *that none but tenants in chief came to parliament*; and that the burgesses of St. Albans might be entitled to that privilege as *tenants in chief*, but could not have enjoyed it upon any other claim? Mr. Madox has shewn, *they were not tenants in chief*; and yet it is proved, by the records above-cited, that their right of coming to parliament was allowed as a privilege, *which they had possessed from time immemorial.* Mr. Madox indeed supposes, “ *that the town of St. Albans* “ *was granted to the abbey by one of the ancient kings* “ *of England: the abbot and the convent held the* “ *town in capite, or immediately of the king (in bur-* “ *gage), as parcel of the endowment of the abbey;* “ *and they held the town or burgesses in demesne, or* “ *(if you please) the burgesses were demesne-men of the* “ *Abbey.*” But admitting this supposition, which is only a mere conjecture (for he had said before, *that he found no proof in any of the most ancient Re-* *venue-rolls that it was a demesne-town belonging to the* *king*), it still appears, that although the abbot held immediately of the king, and might have a right to sit in parliament on that account, as a tenant in chief, yet the town held *of him*, and *not immediately of the king*: the townsmen were *his demesne-men*, not *tenants in chief*, or *demesne-men of the crown.* And therefore this transaction not only disproves the assertion of Dr. Brady; that none but tenants in chief had a right of sitting in parliament before the forty-ninth of Henry the Third; but also shews he is wrong in the account that he gives of the foundation of the right of cities and boroughs to send repre-

V. Hist. of
the Excheq.
p. 523. c. 17.

representatives to that assembly in and after the twenty-third of Edward the First, before which time he denied that they ever had been summoned in a regular manner. His words are these:

“ Having thus proved the time when, and the cause why, citizens and burgesses, and the tenants of the king’s demesnes, were at first summoned to parliament, we shall proceed to discover, what cities and burghs sent their representatives, or citizens and burgesses, upon such summons. The answer to this is very short, *That they were only the dominicæ civitates and burgis regis, the king’s demesne cities and burghs, such as had charters from the king, and paid a fee-farm rent in lieu of the customs and other advantages and royalties that belonged to the crown,*” &c.

Now it plainly appears, that the borough of St. Albans does not answer this description in any respect. *It was not a demesne city or burgh of the king in the twenty-third year of Edward the Second. It had no charter from the crown; nor did it pay a fee-farm rent in lieu of the customs, &c. that belonged to the crown.* The hypothesis of the Doctor is therefore evidently as false with regard to the right as to the time of citizens and burgesses coming to parliament. And it cannot be supposed, that the burgesses of this town were summoned to parliament without any right, by the favor of the sheriff, after the eighth of Edward the Second; because it appears by the records abovementioned; that their claim had been disputed, and judicially determined: so that here was no room for partiality in the sheriff, as in other cases where no dispute had arisen. The king’s council, before which the cause had been tried, would have refused to admit the return of such burgesses to subsequent parliaments, if their right to be summoned had

BOOK II.

had not been clearly made out : but, if their claim had depended on their being *tenants in chief of the crown*, it is evident, *they could not have had any such right*, as they were *not such tenants*. It is true, that, in their petition, they say, *they held their town in chief of the king*, and speak of their coming to parliament *as a service that was incident to their tenure*: but, though this was a false suggestion, yet their right to come to parliament by ancient usage and prescription, *sicut ceteri burgenſes regni, prout totis retroactis temporibus, venire conſueverunt*, might be very good. And therefore the answer was, *Scrutentur rotuli, &c. de cancellariâ ſi temporibus progenitorum regis burgenſes prædicti ſolebant venire, vel non. Et tunc fiat eis ſuper hoc juſtitia, vocatis evocandis, ſi neceſſe fuerit*. This was putting the cauſe entirely on *preſcription*, not on their being proved to be *tenants in chief of the crown*. Domeſday-book and the Exchequer records ſhould have been ſearched, inſtead of the Chancery rolls, if *that* had been the queſtion. In fact it appears, that they continued to hold immediately of the abbot, not of the crown, and yet came to parliament, with other burgeſſes, after this time; the abbot himſelf being obliged to allow their right to that privilege, which in all probability he would not have diſputed, if they had not involved it with another unwarrantable pretenſion, which he could not admit. Mr. Madox ſays, *he had not yet found, that any town, city, or burgh in England, did in ancient time hold of the king, or of any other lord, upon theſe terms, viz. to be quit of all preſtations and ſervices by ſending burgeſſes to parliament*. He might likewiſe have added, that no *tenant in capite* held on ſuch terms. And therefore the claim of theſe burgeſſes, to hold *in capite* of the king by the ſervice of coming to parliament *pro omnimodis ſervitiis regi faciendis*, was undoubtedly falſe. Accordingly

See Hiſtory
of the Exche-
quer, p. 522.
note.

cordingly it was rejected; but yet their right to come to parliament was allowed and established. BOOK II.

I would also observe, that their complaint to the council against the sheriff of Hertfordshire, for having refused to return them, though the names of the burgesses sent by them to parliament had always been enrolled in the Chancery rolls, overturns the position advanced by Dr. Brady, and supported by many others, *that it was left to the sheriff of every county to name and direct which were boroughs, which not, by those indefinite and general words in the writ, "de qualibet civitate duos cives, et de quolibet burgo duos burgenses, &c. eligi facias."*

See Brady on
Boroughs,
p. 52.

For if sheriffs had really a right to do this, and no rule to proceed by but their own arbitrary discretion, the townsmen of St. Albans had no reason to complain, that the sheriff of Hertfordshire had refused to return any burgesses from their town, even though it had been true that they held it of the king. But they speak of his refusal as a grievous offence, *in contemptum regis, et burgensium prædictorum præjudicium, et exheredationis periculum manifestum, super quo petunt remedium opportunum.* Indeed to suppose such a power in that officer is repugnant to reason, and expressly contradicts the words of a statute made in the fifth of Richard the Second; which declare, that if any sheriff shall from thenceforth be negligent in making his returns of writs of the parliament, *or leave out of the said returns any cities or boroughs, which be bound, and of old time were wont to come to the parliament, he shall be punished in the manner as was accustomed to be done in the said case in the said time past.* The sheriffs, in fact, did frequently neglect to return any burgesses for the poorer and meaner boroughs, which could not easily bear the charge of their wages; and this was connived at, when it was done on good

BOOK II.

good reasons: but still it evidently appears, by the statute here cited, *that they had no right to do so*, and that, when they ventured to do it *improperly or injuriously*, they had been *often* complained of and punished for it, *before the making of that statute*. They must therefore have had some rule to direct them therein: and as they certainly had no power to create a new borough, so they could not be justified in not making a return from any of those, *which were bound, and of old time were wont to come to the parliament*, unless by loss of trade, or from any other cause, they were so much decayed, as not to be able any longer to support the expence of maintaining their members. In that case alone it might be equitably judged, *that they were not bound to come to parliament, propter debilitatem eorum et paupertatem*. And the sheriff might be allowed to determine of *this exemption*, upon his own knowledge; but at his own peril. Mr. Tyrrel has well observed, on the words of the statute above-cited, that, *if the first constant appearance of citizens and burgesses in parliament were but in the twenty-third year of Edward the First, from that time to the fifth of Richard the Second was not eighty-five years; and THAT, being within the memory of many men then alive, could not be called OF OLD or ANCIENT TIME, in the French, D'ANCIENŒ*. Nevertheless there is reason to believe; that the same form of summons had not always been used; because it appears, that, in the forty-ninth of Henry the Third, the writs were not sent to the sheriffs, but directly to the cities and boroughs.

See Tyrrel's
Appendix to
the History
of England,
p. 193.

Having now considered the claim of the town of St. Albans, I shall transcribe some records in the Tower of London concerning a petition in parliament to King Edward the Third, from the town of Barnstable in Devonshire; wherein they set forth,
that;

that, among other privileges granted to them by a BOOK II.
 charter of King Athelstan, they had from that time
 enjoyed the right of sending two burgesses to serve
 for them in parliament. And first I shall give an
 extract from the writ of inquisition founded on that
 petition, which is recited therein. “ Sciatis, quod,
 “ cum nuper ad prosecutionem burgensium villæ
 “ de Barnitaple in com. Devon. per petitionem
 “ suam coram nobis et consilio nostro exhibitam nobis
 “ supplicantium, ut cum villa prædicta, à tempore
 “ cujus contrarii memoria non existit, liber burgus fu-
 “ erit, iidemque burgeneses, et eorum antecessores, bur-
 “ genses villæ prædictæ diversis libertatibus et liberis
 “ consuetudinibus, per cartam celebris memoriæ D.
 “ Athelstani, dudum regis Angliæ, progenitoris nostri,
 “ quæ ad liberum burgum pertinent, a tempore con-
 “ fessionis dictæ cartæ usi fuerunt et gavisæ, in hoc,
 “ viz. quod tenementa sua in eodem burgo in te-
 “ stamento suo in ultimâ voluntate suâ quibuscun-
 “ que voluerint legare, et majorem de se ipsis, co-
 “ ram quo omnia placita dictum burghum et
 “ suberbium ejusdem tangentia placitari et termi-
 “ nari debeant, eligere, ac ad singula parlamenta
 “ nostra, et dictorum antecessorum nostrorum, duos
 “ burgeneses pro communitate ejusdem burgi mittere,
 “ nec nqn in singulis taxationibus &c. consueve-
 “ runt :” therefore the king ordered an inquest to
 be made into the truth of the facts therein alledged;
 and particularly *si carta illa fuerit amissa*, as the pe-
 titioners had set forth, and whether it would be
 proper to grant them another, confirming to them
 the same liberties, as they had desired.

In the return to this the jurors say, “ *Burgenses* Ibidem.
 “ *dictæ villæ ad singula parlamenta duos burgeneses*
 “ *pro communitate dicti burgi mittere solebant;*
 “ Item dicunt, quod nihil eis constabat de carta D.
 “ *Athelstani, dudum regis Angliæ, prædictis bur-*
 “ *gensibus,*

See Escheat
 Bundle 18
 Edw. III.
 dated June 23.
 Regn. 14. n.
 100.

BOOK II.

Dated 18 May,
17 Edw. III.

gensibus, seu consuetudinibus prædictis, ut asserunt, concessis." This not satisfying the burgessees, they obtained a writ *ad quod damnum*, to enquire *si prædicti burgeses dictas libertates eis per cartam prædicti Athelstani ut prædicitur, concessas, a tempore prædicto usi fuerunt et gavisi, et si carta illa in formâ prædictâ fuerit amissa; nec non ad quod damnum seu præjudicium nostrum aut alterius cujuscunque cederet, si nos dictas libertates eisdem burgesibus per cartam prædicti Athelstani, ut asserunt, concessas, nec non prædictas libertates per eos de novo petitas, prout superius continentur, per cartam nostram concedamus sibi et hæredibus et successoribus suis in perpetuum possidendas: et ideo vobis mandamus, quod ad certos dies et locos quos vos tres, vel duo vestrum, ad hoc provideritis, inquisitionem illam super præmissis et ea tangentibus in formâ prædictâ faciatis, &c.*

Dated 17
Edw. III.

The return of this writ is as follows: "Inquisitione capta apud Barnstable coram Hamone de Derworthy et Joan. de Baumfield, justiciariis D. regis ad inquisitionem illam capiendam unâ cum Johanne de Stonford et Ricard. de Hankeston, in præsent. Walteri de Horton, Vicecomitis Devon. die Sabat. &c. an. regni Edw. regis Angliæ tertii 17, &c. per sacramentum R. de Wolfe &c. qui dicunt supra sacramentum suum, quod villa de Barnstable est liber burghus, et fuit a tempore quo non extat memoria. Item dicunt quod burgeses villæ prædictæ, et eorum antecessores diversis libertatibus et liberis consuetudinibus per cartam celeberrimæ memoriæ D. Athelstani, dudum Angliæ, progenitoris D. regis nunc, quæ ad dictum burgum pertinent, a tempore consecutionis cartæ prædictæ semper hæcenus usi fuerunt et gavisi, et adhuc gaudent et utuntur, videlicet quod tenementa sua, &c. &c. ac ad singula parliamenta D. regis
" duos

“ *duos burgenses pro communitate ejusdem burgi mit-*
 “ *tere, nec non in singulis taxationibus &c. con-*
 “ *sueverunt. Dicunt etiam, quod prædicta carta,*
 “ *de prædictis libertatibus et consuetudinibus, ejusdem*
 “ *burgensibus per prædictum D. Athelstanum facta,*
 “ *casualiter fuerit amissa. Item dicunt quod non*
 “ *est ad damnum seu præjudicium D. regis aut al-*
 “ *terius cujuscunque, licet D. rex per cartam su-*
 “ *am omnes libertates prædictas ejusdem burgen-*
 “ *sibus et hæredibus &c. per cartam prædict.*
 “ *Athelstani prius concessas concederet in perpe-*
 “ *tuum possidendas.*”

Nevertheless another writ of the following year, after reciting the proceedings had upon the two former writs, says, that, upon complaint having been made, that the latter return had been artfully and unduly obtained, “ Nos advertentes, quod hujus-
 “ modi libertates absque gravi præjudicio nostro et
 “ damno et præjudicio aliorum non possunt con-
 “ cedi hominibus supradictis, *præsertim cum dicta*
 “ *villa de nobis teneatur in capite, ut accepimus, et*
 “ *custodia ejusdem, nomine custodiæ, ad nos et*
 “ *hæredes nostros devolvi, firmaque comitatus*
 “ *prædicti in parte diminui, et alia incommoda*
 “ *tam nobis, quam aliis, evenire possent, volentes-*
 “ *que eo prætextu super hiis plenius informari,*
 “ *assignavimus,*” &c.

The return of this inquisition finds, that *Joannes de Audley* held this borough of the king *in capite per baroniam*; contradicts the finding of the former returns in many points; and particularly says,
 “ *Quod nichil eis constat nec constabat de carta D.*
 “ *Athelstani dudum R. Angliæ, per quam prædicti*
 “ *burgenses prætendunt sibi et eorum prædecessoribus*
 “ *quasdam fuisse libertates concessas.*” But with regard to their right of sending burgesses to serve for them in parliament *from time immemorial*, which
 the

BOOK II. the two former returns had acknowledged and confirmed, it says nothing. And we find that they continued to send them uninterruptedly after this time, without any new charter or franchise granted to them, but purely by *prescription*.

Now, granting that the pretended charter of Athelstan, the existence of which is admitted by the second of these returns, but left doubtful by the first and last, did never exist, yet still these records are of great importance to the question of which I am treating. For, if no burgesses had been sent to parliament before the forty-ninth year of King Henry the Third, how is it possible that the *Concilium Regis*, within fourscore years after that remarkable epocha, viz. in the seventeenth of Edward the Third, should have suffered that prince to order an inquisition to be made into the truth of an allegation so apparently false, as that the burgesses of Barnstable had enjoyed a right of sending two members to serve for them in all the parliaments of his royal predecessors *from the time of King Athelstan*? or what evidence could induce jurors, upon the second inquisition before two of the king's justices and the sheriff of Devon, to find a fact which the whole county, and indeed the whole kingdom, must have been able to contradict from publick notoriety? The absurdity would be still greater, if the practice of summoning burgesses to parliamentary meetings be dated from the twenty-third of Edward the First, as it is by many writers. But the clear inference from these proceedings appears to be, that the custom of sending members from cities and towns to parliaments, or great councils, was then known to be ancient; and the question was, whether Barnstable was entitled to that privilege, either by charter or prescription. In the final issue we find, that, with regard to the charter,

charter, which the burgesſes of that town pre-BOOK II.
tended to have loſt, ſufficient proof was not given;
and therefore the other privileges which they
claimed in virtue thereof were not confirmed or re-
newed: but this of ſending representatives to ſerve
for them in parliament was admitted to be good,
from long uſage and preſcription, though it was de-
termined that they did not hold immediately of the
king, but were the tenants of John de Audley, one
of his barons, who held the borough of him *in*
capite by baronial ſervice. From whence it is evi-
dent, that the right of ſending members to parlia-
ment was not confined to a *tenancy in chief of the*
crown, but might belong to *ſubvaſſals*.

I ſhall conclude this note with a paſſage from
the great antiquary, Mr. Lambard, in his Archai-
onom. “Now as theſe written authorities” (viz.
the Saxon laws he had quoted) “do undoubtedly
“confirm our aſſertion of the continuance of this
“manner of parliament, ſo is there alſo unwrit-
“ten law, or preſcription, which does no leſs
“uphold the ſame: for it is well known, that in
“every quarter of the realm a great many bo-
“roughs do yet ſend burgeſſes to the parliament,
“which are nevertheleſs ſo ancient, and ſo long
“ſince decayed and gone to ruin, that it cannot be
“ſhewed they have been of any reputation ſince
“the Conqueſt, and much leſs that they have ob-
“tained this privilege by the grant of any
“ſucceeding king: ſo that the intereſt which they
“have in parliament groweth from an ancient uſage
“before the Conqueſt, whereof they cannot ſhew any
“beginning.”

Ibid. By a ſtatute of the fifth year of Richard the
Second it is enacted, “that all and ſingular
“perſons and commonalties, which from hence-
VOL. III. E c “forth

BOOK II.

See Harley's
MSS. in the
British Mu-
seum, class II.
press i. shelf
B.

" forth shall have the summons of the parliament,
" shall come from henceforth to the parliament,
" in the manner as they are bound to do, and have
" been accustomed, within the realm of England,
" of old times, &c."

Besides this remarkable testimony of the whole legislature in the reign of Richard the Second, to the antiquity of the custom of the commons coming to the parliament, we have a petition of the commons, in the second parliament of the reign of Henry the Fifth, which sets forth to that prince, that as it hath ever been their libertie and freedom, that there should no statute nor law be made, unless they past thereto their assent, considering that the commune of your land, the which is and ever hath been a member of your parliament, be as well assenters as petitioners," &c.

Ibid. " And if any person of the same realm, which
" from henceforth shall have the said summons, be
" be archbishop, bishop, abbot, prior, &c. do ad-
" sent himself, and come not at the said summons
" (except he may reasonably and honestly excuse
" himself to our lord the king), he shall be amerced
" and otherwise punished, according as of old
" times hath been used to be done within the said
" realm in the said case."

In the twelfth of Richard the Second, the abbot of St. James's, Northampton, being summoned to parliament, petitioned to be discharged, because he was not a tenant by barony, nor in chief of the king. The words are these: " Non tenet per baroniam, nec de rege in capite; sed tantum in puram et perpetuam eleemosynam; et nec ipse abbas, nec predecessores sui, fuerunt ad parlamentum citati huc usque, Unde petit remedium et habuit." Again,

in

in the twenty-sixth year of Edward the Third, the abbot of Leicester was discharged from all attendance in parliament on the like suggestion, because he held not of the king *per baroniam seu alio modo*, *per quod ad parlamenta seu concilia nostra venire tenetur*. BOOK II.
V. Rot. Parl.
26 Edw. III.
p. 2. m. 22.

I would observe on these records, that, as before the reign of William the Conqueror all ecclesiastical dignities, as well those which held of the king as others, were *ad puram et perpetuam elemosynam*; and as the alterations made by William affected only those which held immediately of the crown; it is no wonder that men who were possessors of such dignities *not bolden of the crown*, and who much desired an exemption from all secular services, should not acquiesce in an extension of that alteration; and therefore these abbots very properly petitioned against being summoned to parliament contrary to the privilege of their tenure; and the king answered very justly to the petition of the latter, that, *volentes illum indebite vexari*, he discharged him from that service. But nothing can be inferred from hence to prove the positions, which some writers have laid down, that no freeholders had anciently a share in the legislature, except *tenants in chief*, and that all service in parliament was then considered no otherwise than as a trouble and burthen, which every member of parliament desired to be exempt from, and endeavoured to avoid.

The statute itself, which is the subject of this note, has been alledged as an argument to shew how unwillingly our parliaments were attended, when it was necessary to enforce the performance of that duty by a particular law: but the disturbed and tumultuous state of those times, when it was dangerous to pass from one part of the realm to another, may better account for this statute; and that

BOOK II. the chief object of it was to enforce the attendance of the *spiritual barons*, I think very probable, as we know that their desire of a total separation from the laity, in all acts of government, made them remiss in the performance of their duty.

See Cotton's
Abridgement
of the Records,
p. 43.

Indeed, some time before, namely in the eighteenth year of Edward the Third, notice is taken in the record of parliament, *that sundry of all estates were absent from the parliament and convocation then assembled*: "*at which* (says the record) *the king did no less woe than he was thereat offended*: wherefore he charged the archbishop, for his part, to punish the defaults of the clergy, and he would do the like touching the parliament." But the king's surprise on this occasion, as well as the offence that it gave him, shews, that such absence was unusual, and must certainly have had some extraordinary cause. It was customary in those times, if the parliament was not quite full at the first meeting, to adjourn for a day or two, till the absent members came in; and by the records it appears, that the lords sometimes, and the commons frequently, were called by name the first day of the parliament's sitting, and such of them as were absent without just cause were both blamed and fined. Even in our days it is necessary to enforce the attendance of members by *calls of the house*, and sometimes by the punishment of those who disobey them.

V. Prynne's
Preface to
Cotton's A-
bridgement of
the Records in
the Tower.

P. 227. But besides these authorities, drawn from statutes and records, very evident indications of the presence of the people in the national councils, and of their being constituent parts thereof, though, indeed, in a confused, disorderly manner, are to be found in some ancient histories, and contemporary accounts

accounts of transactions in parliament during the BOOK II.
times which I write of; viz. from the death of
Edward the Confessor, to that of Henry the Se-
cond.

Gervase of Canterbury, speaking of the promotion of Lanfranc to that metropolitan see, in the reign of William the Conqueror, says it was done, “*Eligentibus eum senioribus ejusdem ecclesiæ, cum episcopis et principibus, clero et populo Angliæ, in curia regis.*” Here the *clerus et populus* are mentioned separate and distinct from the *episcopis et principibus*, and therefore cannot, by any natural construction, be understood to mean the same persons. Moreover, in the account of the same transaction, published at the end of Taylor’s Gavelkind, it is said, that the king committed to Lanfranc the church of Canterbury, “*consensu et auxilio omnium baronum suorum, omniumque episcoporum et abbatuum, totiusque populi Anglicani.*” These words seem to afford a very evident testimony, that the people were present in these parliaments, and acted therein, conjointly with all the spiritual and temporal barons. But in the Chronicle of Litchfield, and likewise in Roger de Hoveden, mention is made of one that was very particular. The words of the Chronicle of Litchfield are these: “*Anno Gulielmus regni sui quarto, apud Londonias, consilio baronum suorum fecit summoneri per universos Angliæ comitatus omnes nobiles, sapientes, et suos lege eruditos, ut eorum leges et consuetudines audiret, &c. Unde per præceptum regis Willielmi electi sunt de singulis totius Angliæ comitatibus xii viri sapientiores, quibus jurejurando injunctum fuit, coram rege Willielmo, ut quoad possent recto tramite, neque ad dextram neque ad finistram partem divertentes, legum suarum consuetudinem et sancita patefacerent, nil prætermittentes,*

Wilkins Leg.

Anglo-Sax.

p. 216.

& Seldeni

Not. ad

Eadm. p. 171.

BOOK II.

V. Hoveden,
Ann. f. 343.

P. 104. 107.

“tentes, vel prævaricando mutantes.” The account in Roger de Hoveden is to the same effect, with very little difference in the expressions. The Lord Chief Justice Hale says, in his History of the Law, *This appears to be as sufficient and effectual a parliament as ever was held in England.* Nevertheless it must be noted, that the election of *twelve men from every county* does not appear to have been usual in other parliaments, or great councils: at least we have no account, in any record or history, of just *that number* having been sent upon any other occasion.

V. Eadm. hist.
noy. l. i. p. 26,
27.

Eadmer, who lived in the reign of William Rufus, has given an account of a parliament held under that prince, on an extraordinary occasion, viz. for the determining of a dispute between the crown and archbishop Anselm, on a question of great importance to the church and the state. He calls it *placitum, quod totius regni adunatione apud Rockingham habitum est.* He was present in it himself, and has set down all the particulars of what was done there. The general description of the assembly is in much the same terms, as other Historians of that age were accustomed to use in describing our parliaments: *Episcopis, abbatibus, cunctisque regni principibus una coeuntibus, &c.* But besides these he takes notice of a *great multitude* of monks, clergymen, and laymen, who were *present*, and *assistant*, and to whom, as well as those of a superior rank, the archbishop addressed his discourse. “Anselmus autem episcopis, abbatibus, et principibus, ad se à regio secreto vocatis, eos et assistentem monachorum, clericorum, laicorum, numerosam multitudinem hac voce alloquitur.” From what follows it is evident, that he submitted the question, for the discussion of which the parliament had been called, to the determination of *the whole assembly.*

assembly. "*Omnes, dico, qui hic congregati estis in nomine domini precor intendite, et causæ, propter quam ventilandam adunati estis, pro viribus opem vestri consilii ferte.*" He applied indeed more particularly to his brethren, the bishops; "*Omnes itaque, sed vos præcipue, fratres et cœpiscopæ mei, precor et moneo, quatenus, istis diligenter inspectis, studiosius, sicut vos decet, quo inniti queam mihi consilium detis.*" But this no more excluded the rest of the assembly from giving their opinion on the question in dispute, than it did the temporal barons. On the contrary, the beginning of this very paragraph says, that *all* were desired to *hear and consider it, in order to form their advice to Anselm upon it.* It appears, that, at first, all the spiritual and temporal lords, and perhaps other *chief men*, comprehended under the word *principes*, here used by Eadmer, were with the king in an inner room: from whence they were *called out into the church of the castle*, which was the place of the *general assembly*, to hear the question proposed to them by Anselm. "*Anselmus autem episcopis, abbatibus, et principibus, ad se à regio secreto vocatis, eos et assistentem monachorum, clericorum, laicorum, multitudinem, hac voce alloquitur.*" And they occasionally went backwards and forwards, several times, in the course of the deliberation. "*Omnes igitur assidentes oppido turbati, cum magno tumultu surrexerunt, &c. Quibus dictis, ad regem reversi sunt.*" And afterwards, "*Facta itaque longâ morâ redeunt episcopi cum nonnullis principibus a rege dicentes,*" &c. And again, "*reversi ad regem persuaserunt inducias nullâ ratione dandas, &c. Cum igitur (episcopus Dunelmensis) regi persuassisset quæsitâs inducias Anselmo non esse dandas, comitatus quampluri-*

BOOK II. “*bus, qui verba sua suo fulcirent testimonio, ad*
 “*virum ingrediens ait, Audi querimoniam regis*
 “*contra te, &c.*” And, upon hearing Anselm’s
 answer, they again returned to the king, “*Qui-*
 “*bus auditis, aspicientes se invicem, nec inve-*
 “*nientes quid ad ista referrent, ad dominum suum re-*
 “*versi sunt.*” While they were with the king, they,
 at first, consulted together with some regularity;
 but afterwards talked to one another, without
 order, and in small, separate parties. “*Ad quæ*
 “*rex vehementer iratus cum episcopis atque principi-*
 “*bus intentissime quærere cœpit quid dictis ejus obji-*
 “*cere posset, nec invenit. Scandalizati ergo inter se*
 “*abinvicem sunt in partes divisi, et hic duo, ibi tres;*
 “*illic quatuor in unum consiliabantur,*” &c. These
 Eadmer calls afterwards *conciliabula*, and certainly
 they were not agreeable to the regular forms either
 of a council or a parliament. But when, in con-
 sequence of what had been thus irregularly de-
 termined, the bishop of Durham, with all his bre-
 thren, and many of the temporal nobles, had
 spoken very strongly, *before the whole assembly,*
 against Anselm, and after hearing his answer had
 returned back to the king, a murmur arose, *from*
all the multitude in the church, upon the wrong done
 to that prelate; yet they only complained of it,
 in a low voice, to each other, none of them daring
 to speak openly for him, out of fear of the king,
 whom Eadmer calls *the Tyrant*. But at last, a
 knight, or military tenant, *miles unus*, coming forth
 from the multitude, which seems to have been
 thronged promiscuously together, knelt down be-
 fore Anselm, and *in the name of them all* entreated
 him not to be disturbed at what had been said to
 him, &c. whereupon (says the Historian) Anselm
 understood, *that the opinion of the people was with*
him;

him; at which he and those who belonged to him were much rejoiced and encouraged, trusting according to the Scripture, *that the voice of the people was the voice of God.* “*Ortum interea murmur est totius multitudinis pro injuriâ tanti viri summissa inter se voce querentis. Nemo quippe palam pro eo loqui audebat, ob metum tyranni. Veruntamen miles unus, de multitudine prodiens, viro astitit, flexis coram eo genibus, dicens, Domine pater, rogant te per me supplices filii tui ne turbetur cor tuum ex iis quæ audisti, &c. Quæ verba dum pater comi vultu accepisset, intellexit animum populi in sua sententia secum esse. Gavisus ergo exinde sumus, et æquanimiores effecti, confidentes juxta scripturam, vocem populi vocem esse Dei.*” Whether, in the multitude, from which this miles came forth, and in whose name he spoke to Anselm, any or all the representatives of counties, cities, and boroughs, were comprehended; or whether any such were included in the general denomination of *proceres et principes regni*; is not sufficiently clear from this passage. It appears, that Anselm sat in the midst of the *proceres* and of the multitude thronged together. “*Anselmus in medio procerum et conglobatæ multitudinis sedens ita orsus est,*” &c. Eadmer, who was chaplain to Anselm, seems to have had a seat near him, “*Mane autem reversi sedimus in solito loco expectantes mandatum regis:*” but it is possible, that this seat might be granted to him, rather for the convenience of that prelate, than in his own right. However this may have been, it is evident from the passages recited above, that many regular and secular clergymen, and many laymen of a degree inferior to the *proceres et principes regni*, were present and assistant therein. I need not observe that even now, when the two houses

BOOK II. houses are together in the same place, the peers *sit*, and the commons *stand*.

The same contemporary author gives us also an account of a parliament held in the year 1100, by King Henry the First, wherein "*tota regni nobilitas cum populi numerositate Anselmum inter se et regem medium fecerunt*, quatenus ei, vice sui, manu in manum porrectâ, promitteret justis et sanctis legibus se totum regnum, quod viveret, in cunctis administraturum." This promise, which may be called a confirmation of his charter under the guarantee of Anselm, being solemnly given in parliament, at the desire of the whole nobility of the kingdom and of a numerous assembly of the people, who are spoken of as present and concurring with the former, is another strong evidence, not only of the attendance of the commons in the parliaments held during those times, but of their taking part in the business transacted in them, and being considered as members of the great council of the nation. It appears, that this meeting was in solemnity Pentecostes, when the nobility met of course; but I have observed before, that it was frequently the practice of those times to convert those lesser assemblies into full and compleat parliaments, by summoning the commons to attend them.

In the year eleven hundred and fourteen a great council was convened by Henry the First, in which Radulph bishop of Rochester was elected archbishop of Canterbury. The monks of Canterbury, in their epistle to the pope on that subject, which the beforementioned Historian has given us, wrote thus: "*Adunato conventu totius Anglici regni in præsentia gloriosi regis nostri, Henrici, electus à nobis, et clero, et populo, est ad regimen ipsius ecclesie Radulphus, &c.* Huic electioni affuerunt
"episcopi,

V. Eadm.
hist. nov. l. v.
p. 111. 113.

“episcopi, abbates, et principes regni, et *ingens*
 “*populi multitudo*, consentiente domino nostro
 “rege, et eandem electionem laudante, suâque
 “auctoritate corroborante.” The mention here
 made of *a multitude of people* assisting together with
 the bishops, abbots, and nobles, or chief men of
 the kingdom, in the election of a primate, which
 appears to have been made in full parliament, or
 (to use the words of the letter) in *an assembly of the*
whole kingdom, is an authority which much corro-
 borates the passages above-cited. I will add, that
 we have a letter from King Henry the First to the
 pope, on another occasion, in which he says,
 “Notumque habeat sanctitas vestra, quod, me
 “vivente, Deo auxiliante, *dignitates et usus regni*
 “*Angliæ non minuentur*. Et si ego (quod absit) in
 “tantâ me dejectione ponerem, *optimates mei, im-*
 “*mo totius Angliæ populus id nullo modo pateretur*.”
 From these words it appears, that this king himself
 was of opinion, and made no difficulty of declaring
 to the pope, *that he could not give up the dignities*
and customs of his kingdom without the consent of the
nobility and people of England: a very strong proof,
 both that our *monarchy* was not then *absolute*, but
limited by the parliament; and that the *limiting*
power was vested in the *people*, as well as in the
nobles.

I come now to consider the reign of King
 Stephen with relation to this point. Of a great
 council, or parliament, held in the first year of
 that king, Henry of Huntingdon, a contemporary
 historian, writes thus: “Rediens autem inde rex
 “Stephanus in Quadragesimâ tenuit curiam suam
 “apud Lundeniam in solemnitate Paschali, quâ
 “nunquam fuit splendidior in Angliâ *multitudine*,
 “*magnitudine*, auro, argento, gemmis, vestitu,
 “*omnimodâ dapnitate*.” By these words it ap-
 pears,

BOOK II.

V. Gest. Ste-
phani. regis
anno Du-
ci. fac. p. 932,
933.

pears, that this was a council held, as usual, at Easter, and one of the fullest that had ever been seen in England. The contemporary author of the Acts of King Stephen speaks also of the same assembly in the following words: "Omnibus igitur summatibus regni fide et jurejurando cum rege constrictis, *edito per Angliam promulgato*, summos ecclesiarum ductores *cum primis populi* ad concilium Londonias convocavit. Illis quoque quasi in unam sentinam illuc confluentibus, *ecclesiarumque columnis sedendi ordine dispositis*, vulgo etiam confuse et permixtim, ut solet, ubique se ingerente, plura regno et ecclesie profutura fuerunt et utiliter ostensa, et salubriter pertractata. De ecclesie siquidem statu in melius componendo, de ejusdem libertate multiplicius restauranda, splendide nonnulla in ipsi regis presentia perorarunt," &c. This is a very remarkable passage. It appears by it, that the king had summoned to this council the prelates or governors of the church, with the chief of the people; ecclesiarum ductores cum primis populi. But there was in the assembly a lower order of people called, by this writer, *vulgus*, who did not sit, as the prelates and nobility did, in an orderly manner, but crowded in *confusedly* and *promiscuously*, according to custom. "Ecclesiarumque columnis sedendi ordine dispositis, *vulgo etiam confuse et permixtim, ut solet, ubique se ingerente*," &c. Now this perfectly well agrees with the expressions of *populi numerositas, conglobata multitudinis, et assistentem monachorum, clericorum, et laicorum numerosam multitudinem*. But I suspect there is an error, either of the press, or of the manuscript from whence it was printed, in the first part of the sentence. Instead of *illis quoque, quasi in unam sentinam, illuc confluentibus*, I think it should be *aliis*. And then it

it will run thus: "Edicto per Angliam promul- BOOK II:
 "gato, summos ecclesiarum ductores cum primis
 "populi ad concilium Landonias convocavit. Aliis
 "quoque, quasi in unam sentinam, illuc conflu-
 "entibus, ecclesiarumque columnis sedendi ordine
 "dispositis," &c. This is much better sense; and
 then it will appear from the whole passage so cor-
 rected, that the chief of the clergy and laity having
 been summoned to attend this council, by the king's
 edict, or mandate, published over all England,
 others of an inferior degree came in also, confusedly
 and promiscuously, as they had been used to do on
 such occasions. This historian indeed has men-
 tioned only the prelates as *sitting* in the assembly;
 but it must be understood that the lay-nobility, of
 all ranks and degrees, enjoyed the same distinction.
 We also find, that in this parliament the king was
 personally present at all the debates, and not in *se-*
creto regio, with the nobles alone, as in that described
 by Eadmer, but together with the *vulgus*. "*Vulgo*
 "*etiam confuse et permixtim, ut solet, ubique se inge-*
 "*rente, plura regno et ecclesiæ profutura fuerunt et*
 "*utiliter ostensa, et salubriter pertractata.* De ec-
 "clesiæ siquidem statu in melius componendo, de
 "eiusdem libertate multiplicius restaurandâ, splen-
 "didè nonnulla in ipsâ regis *præsentia* perorarunt."
 Nor is any distinction made or intimated, as if the
 decision or even the discussion of the matters agitated
 before him, in this mixed assembly, was confined
 to the nobles. Yet they were points of the highest
 nature; and, if the constitution in those times ad-
 mitted the *vulgus* to participate in such consulta-
 tions, we may confidently assert, that a popular
 power was mixed with the aristocratical in the great
 councils of the nation. But we must not suppose
 that this *vulgus*, or the *populi numerositas* before
 mentioned, included any persons who were not
free

BOOK II. *free members of the community*; such as originally had a right to assist in great councils. Our parliaments under the government of the Normans were *contracted images* of the general assemblies held in open plains by the first founders and lawgivers of the English nation. And they still retained a great deal of the confusion and irregularity natural to those assemblies.

V. Gerv.
Chron. sub.
an. 1157.

In the year 1157, a parliament was called to meet at Northampton by King Henry the Second, of which Gervase of Canterbury, a contemporary writer, gives this description. "*Convocati sunt ad eum præfules et principes regni, aliaque inferioris ordinis personæ* apud Northamptoniam. Post varios autem sermones, *et regni negotia*, actum est etiam de professione Silvestri abbatis archiepiscopo Cantuariensi faciendâ." The *aliaque inferioris ordinis personæ*, mentioned here after the *præfules et principes regni*, as *convened* by the king, were, I presume, the inferior tenants in chief of the crown, and such representatives of the commons as were *summoned* to parliament, but were not of a rank and dignity to be reckoned among the nobility.

P. 83.

Matthew Paris mentions a controversy between the bishop of Lincoln and the church of St. Albans, which was decided in a great council held at Westminster under King Henry the Second, in the year 1162, at which were present the king himself, the two archbishops, nine bishops, the earl of Leicester grand justiciary, with earls, barons, abbots, *archdeacons, et innumera turba regni*.

V. Stephanid.
in vitâ S. T.

Soon after this was held the famous council of Clarendon, which Mr. Selden calls, *the great parliament*. It is termed by Fitzstephen, a contemporary writer, *generale concilium*. Matthew Paris, in reckoning up the several persons in this council, who swore to observe the laws there enacted, says, "Archi-

“ Archiepiscopi, episcopi, abbates, priores, *clerus*,
 “ cum comitibus, baronibus, et proceribus cunc-
 “ tis, juraverunt, &c.” Now *clerus*, being thus
 named after archbishops, bishops, abbots, and pri-
 ors, shews that other clergymen of a rank inferior
 to these were present in that council. The same
 historian says, it was held *in præsentia regis Henrici*,
præsidente Johanne de Oxonia. This is the only
 mention I meet with of the person who presided in
 any parliament of those times. John of Oxford
 was then of no higher dignity than king’s chaplain.

In the preamble or preface to the Constitutions
 of Clarendon, it is said, “ Facta est ista recognitio
 “ coram archiepiscopis et episcopis, *et clero*, et co-
 “ mitibus, et baronibus, et *proceribus regni*. Et eas-
 “ dem consuetudines recognitas per archiepiscopos,
 “ et episcopos, et comites, et barones, *et per nobili-*
 “ *ores et antiquiores regni*, Thomas Cantuariensis,
 “ &c. concesserunt,” &c. And at the end of them,
 “ Facta est autem prædictarum consuetudinum et
 “ dignitatum recordatio regiarum, à præfatis ar-
 “ chiepiscopis, et episcopis, et comitibus, et baro-
 “ nibus, *et nobilioribus et antiquioribus regni* apud
 “ Clarendonam,” &c. In these descriptions, which
 are short and general, like all the others of our an-
 cient laws and statutes, the words of the most un-
 certain signification are the *proceres* and the *nobiliores*
et antiquiores regni, mentioned after earls and ba-
 rons. I am inclined to believe, from the authori-
 ties before-cited, and others that will hereafter be
 given on this subject, that these *proceres et nobiliores*
regni were the tenants in chief of the king below
 the rank of barons, the knights of shires, and the
 representatives of the principal cities. But whom
 are we to understand by *antiquiores regni*? The Saxon
 word *ealdormen*, of which these Latin words appear
 to be a translation, signified the senior or superior
 magistrates

V. Constit.
 in Append.

B. O. K. II.

magistrates in any community. Sir H. Spelman, in his Glossary, explains it thus: ‘ Multipliciter “ autem occurrit apud Anglo-Saxones, utpote pro “ *seniore vel superiore in quavis praefectura.*” Of which he gives many proofs. It may then be thought, that, by the *antiquiores regni* here mentioned, some such are denoted; and that, as they are named after barons, they probably were not of high rank. But other testimonies shew, that they have a particular reference to those old men, of different orders and degrees, who were ordered to recollect, and set down in writing, the ancient customs of the realm. For, in the account that is given of this council by Gervase of Canterbury; we find these words: “ Craftino autem, cum in unum “ convenissent, et de hesternæ diei serie pauca retulissent, sciens rex quod qui major ætate major est et “ *iniquitate, Ite, ait, ætate et sapientia provectiores, “ et avi mei consuetudines disquirite, ut in scriptum redactæ deducantur in medium,*” &c. The bishop of London also says, in a letter to Becket concerning this transaction, that the ancient customs of the kingdom were set forth and put into writing *antiquorum memoria.* And in another epistle, from all the clergy of the province of Canterbury to the pope, we find these words: “ Adjuratis itaque per “ fidem, et per eam quæ in Deum spes est, majoribus natu episcopis, aliisque regni majoribus, retroacti “ temporis insinuato statu, dignitates requisitæ palam “ prolatae sunt, et summorum in regno virorum testimoniis propalatae.” It is not improbable, that some old magistrates, well acquainted with the ancient customs in judicial proceedings, were summoned to parliament with a particular view to this enquiry, namely, the *seniores in quavis praefectura*: and very possibly the oldest magistrates in towns and boroughs may have been their representatives

See it in the
Appendix to
vol. IV.

Epist. 126.
e Cod. Cotto-
niano.

V. Epist. 128.
lib. i. e Cod.
Vatican.

representatives in the times of Henry the Second. **BOOK II.** would here observe, that if the omission of naming representatives of counties, cities, or boroughs, in the descriptions of this council, be taken as a proof that none were in it, that proof will hold as strong to shew, that no tenants *in capite* of the king *inferior to barons* were present therein: but that *all* who held of the king *in capite* had a right to be present *in generali concilio*, which this is said to have been, has before been proved from Records.

Among these tenants there were many, who, in King Henry the First's charter, are distinguished from barons. "Siquis *baronum meorum*, comi- See the note on the Record of the 15th of King John, cited by Brady.

"tum, *vel aliorum qui de me tenent*, mortuus

"fuerit;" &c. And again, in another clause, "Si-

"quis *baronum vel aliorum hominum meorum* filium

"suum nuptum tradere voluerit," &c. And a

contemporary author says, that to the parliament of Northampton, where Becket was arraigned, all the tenants in chief were summoned. "In castro

"Northamptoniæ solemne statuens (rex) celebrare

"concilium; *omnes qui de rege tenebant in capite*

"*mandari fecit*." Whereas many other writers, in

describing that parliament, mention only prelates,

earls, and barons. Indeed the historians of this and

the following century seldom take notice of any

but the greater nobility in parliamentary councils.

And from this silence a negative argument has

been drawn against the existence of any others in

such assemblies. But this proof is overturned by

positive testimonies from other contemporary histo-

rians, and sometimes from themselves.

Thus Matthew Paris, in the description he gives

of a parliament, which he terms *a most general one*,

in the thirtieth year of King Henry the Third,

mentions none of the laity, but earls and barons;

and none of the clergy, but bishops, abbots, and

Vol. III. F f priors.

V. Stephan. in vita S. T. Selden's Titles of Honor, part ii. P. 733. See also Rot. Claus. 19 H. III. dorfo. & Brady's Answer to Petyt, P. 69.

V. M. Paris, sub ann. 1246.

priors. "Medio vero Quadragesimæ, edicto regio convocata, convenit ad parliamentum generalissimum totius regni Anglicani totalis nobilitas Londini, videlicet, prelatorum, tam abbatum et priorum, quam episcoporum; comitum quoque et baronum, ut de statu regni &c. contrectarent." A stronger passage can scarcely be found in any writer, to countenance the opinion, that, so late as in the thirtieth year of King Henry the Third, our *most general parliaments* consisted only of the *nobility of the kingdom*; and that by the *nobility* none were meant but prelates, earls, and barons. Yet this very author will himself furnish an evident proof, that in this same parliament, not only all the tenants in chief, but *the whole clergy and people* were present, and participant in the acts done therein. For he tells us, that when the king had laid before his parliament several articles, "super gravaminibus et oppressionibus ecclesiæ et regni sui, &c. Hæc attendentes universi ac singuli unanimiter consenserunt, ut adhuc, ob reverentiam sedis apostolicæ, D. Papæ humiliter ac devote, tam per epistolas, quam per solemnes nuncios, supplicarent, ut tam intolerabilia gravamina et jugum subtraheret importabile. Scripserunt igitur D. Papæ in hæc verba." He then recites the letters they wrote to the pope, of which the first is from the bishops of the province of Canterbury; the second from all the abbots and priors of England in the name of themselves and their convents; and the third runs in these words: "Sanctissimo &c. Devoti filii sui, comes Cornubiæ Richardus, Simon de Monteforti, comes Legrecestræ, de Boun comes Hertfordiæ et Essexiæ, R. le Bigod, comes Norfolkiæ, R. comes Gloverniæ et Herefordiæ, R. comes Wintoniæ, W. comes Albemariæ,

“ Albemarlæ, H. comes Oxoniensis, et alii totius
 “ regni Angliæ barones, proceres, et magnates, ac
 “ *nobiles portuum maris habitatores, nec non et clerus*
 “ *et populus universus salutem,*” &c. Here *the*
inhabitants of the Cinque Ports (of whom no men-
 tion was made in the description above given) are
 added to the barons *and other nobles and chief men of*
the kingdom, as concurring in this epistle; and,
 over and above all these, *the whole clergy and peo-*
ple. Many other instances may be given, how lit-
 tle stress ought to be laid on the silence of writers in
 the short and inaccurate accounts of great councils
 or parliaments, which we commonly meet with,
 during this period of our history, for the determin-
 ing of this question; but I will only produce one
 more, from the Annals of Burton, which, speaking
 of a parliament held in the thirty-ninth year of
 Henry the Third, describe it thus: “ Post festum S.
 “ Michaelis tenuit rex parliamentum suum
 “ apud Westmonasterium, convocatis ibidem *epi-*
 “ *scopis, abbatibus, et prioribus, comitibus et baroni-*
 “ *bus, et totius regni majoribus.*” “ From whence
 “ (says Dr. Hody) one would at first sight con-
 “ clude, that the *inferior clergy* were not present.
 “ But from hence it appears, that we ought not to
 “ rely on such kind of enumerations. For imme-
 “ diately it follows, “ In quo petebat à clero de
 “ laicis feudis suis sibi suffragium exhiberi &c.
 “ disponens, de suo consilio iniquo, hoc prius à
 “ clero, et postmodum à *populo majori et minori*
 “ extorquere. Episcopi vero, abbates, priores,
 “ *et procuratores, qui ibidem pro universitate affue-*
 “ *runt, nolentes hujusmodi exactioni acquiescere,*
 “ &c.

V: Ann. Bur-
 ton: sub ann.
 1255. p. 355.
 Hist. of Con-
 vocat. p. 345.

If these prectors, who were there for the whole
 body of the clergy, had not been thus expressly

BOOK II.

named in the following paragraphs, together with the *populus minor*, or commons, the foregoing description might have been brought to confirm Dr. Brady's assertion, that none but tenants in chief were to be found in our parliaments before the forty-ninth of Henry the Third: whereas now we are assured, by the testimony of these annals, that even this mode of representation had taken place before that time. Indeed the learned Dr. Wake, in his book against Atterbury, on the state of the Church and Clergy of England (p. 202.), supposes, that the proctors here mentioned were not present in parliament, but only in a legatine council held at the same time. This is setting aside the authority of those Annals, because they disagree with his hypothesis. But how could the writer of them, *who lived himself at that time*, have made such a mistake, if no proctors for the clergy had ever come to parliament before the twenty-third year of Edward the First?

Having thus shewn the insufficiency of the argument drawn by many eminent writers, against the presence of the commons in our ancient legislature, from the general silence of the historians who lived in those times, I shall proceed to lay before the reader such descriptions of parliaments in the reign of Henry the Second, as seem to contain a degree of positive evidence which may give light to this question. Gilbert Foliot, bishop of London, in the letter to Becket abovementioned; where he is speaking of a parliament convened at Northampton, for the trial of that prelate and other business of the kingdom, says, "*Convenerit populus ut vir unus*:" It would be a great force on the natural meaning of the word, to construe *populus* here as comprehending only the nobility and tenants

V. Append.
to vol. iv.
Epist. 126.

tenants in chief of the crown. At the same time it is evident, that *the whole body of the people* (which is the proper and obvious sense of the term) could not have assembled in that town or castle, otherwise than by some mode or representation. Such indeed of the inferior clergy, or lay-freeholders, as resided in or near Northampton, might be personally there, *confuse et permixtim*; but they whose abode was far distant, and large communities of men, could only come thither by *procurators*, or *representatives*. And in this way the expression, *convenit populus ut vir unus*, is intelligible and just. The bishop of London, after having mentioned this great attendance at Northampton in consequence of the king's summons, goes on in these words:

“ *Et assidentibus sibi quorum id dignitati congruebat et ordini, quod dictum est super expresso mandato suo, in querelam adversus vos, usus quâ decuit modestiâ et venustate, proposuit.*” A distinction

is here made between the different ranks and orders of men comprehended before under the general word *populus*. It is said that those, *to whose dignity and rank it belonged*, sitting near to the king, he modestly laid before them his complaint against Becket: which implies that others were present, who were not of a rank and dignity to be seated in this assembly. Of the course of the proceedings I shall say more in another part of this work. It will be sufficient here to observe, that the business of this assembly, which Brompton expressly calls

parliamentum, and which certainly was more than the ordinary *curia regis*, appears not to have been confined to the trial of Becket: for a contemporary author informs us, that a scutage was settled in it, for raising foot soldiers to be employed against the Welsh. And it is probable, that other matters were also considered in it, as the meeting

V. Brompt.
Chron. sub.
ann. 1165.

V. Stephanid.
in vitâ S.
Thomæ.

BOOK II. was so general; though the historians, being monks, are so taken up with the affair of Becket, that they have omitted to mention them. In the author last cited we find these words: "Consulentes tibus episcopis, comitibus, et baronibus Angliæ omnibus, Normaniæ pluribus." I presume that these Norman barons, who are mentioned here as consulting with those of England in this parliament, had lands and honors in the kingdom; for the writer takes no notice of it as an irregularity. Roger de Hoveden, in his account of the transactions in this council relating to Becket, has these words: "Et cum venisset ad aulam regis, descendit et ipse, crucem suam bajulans, et intravit domum regis. Deinde intravit *exteriorem cameram* solus, portans crucem suam. Nullus enim suorum sequebatur eum. Et cum intrasset, invenit *plebem multam in eâ, seditque inter illos: rex autem erat in secretiori thalamo cum suis familiaribus.*" This is exactly agreeable to Eadmer's account of the parliament at Rockingham castle, where the king was in *secreto regio cum principibus*, and the *multitudo populi* was in the body of the church belonging to the castle. Hoveden afterwards calls this outward room *curia*. And in the passage above-cited he says the archbishop sat down among the commons, *invenit plebem multam in eâ, seditque inter illos*: which he surely would not have done, if they had been a mere mob. Another author of that age (Alanus in Quadrilogo) says, that the king expected him in this outward chamber, where Roger de Hoveden tells us the *multa plebs* was assembled; but that, upon his coming-in armed with the cross, the king retired into an inner room. "Intraturus cameram regis, ubi eum rex præstolabatur, ad ostium ipsum à crucis bajulo crucem accepit, et palam, cunctis videntibus, ipse

“ ipse eam bajulavit, &c. Audiens autem rex
 “ archiepiscopum armatum venire, &c. citius re-
 “ cessit in conclave interius.” It is of no importance
 to the point I am considering now, which of these
 authors is right in this particular: but from both
 accounts it appears, that the chamber, in which
 Hoveden says the *plebs* was assembled, was the
 great chamber of the parliament. And the words
 of Gervase of Canterbury are much the same with
 those above-cited.

In the year 1188, a great council, or parliament,
 was held by Henry the Second at Gedington near
 Northampton, in which a very heavy tax was laid
 upon the whole nation for the Crusade against Sa-
 ladin. Hoveden says, “ Rex magnum convoca-
 “ vit concilium episcoporum, abbatum, comitum,
 “ et baronum, et aliorum multorum, tam clericorum
 “ quam laicorum.” From these words compared
 with, and explained by other passages, which I have
 cited before, we may suppose that this parliament,
the last of Henry the Second, had in it all the inferior
 orders of freemen both clergy and laity; that is,
 some of each order.

The reader may enquire, in what manner the
 opinion of the people was taken, when they were
 assembled in the confused and irregular multitudes
 before described. Of this I find no account that is
 absolutely certain; but a very probable conjecture
 may be drawn from a passage in the Continuation
 of the History of Florence of Worcester by another
 ancient writer. Describing a synod held at West-
 minster, in the year eleven hundred and twenty-
 five, he says, “ that all the prelates were there
 “ cum innumerâ cleri et populi multitudine.” He
 then recites the several canons, or decrees, which
 they made, and concludes them all with this form

BOOK II. of words thrice repeated, "*Placet vobis? Placet?*"

See Parlia-
mentary Hi-
story, p. 391.

which undoubtedly was the manner of asking and giving votes made use of in that synod; from which we may reasonably infer, that the same was used in our parliaments, the resemblance between those and synods being then very great. So late as in the twenty-eighth year of King Edward the Third; we find, that the commons were told by the lord chamberlain, in the presence of the lords, that there were great hopes of bringing about a peace between England and France, by means of certain commissioners appointed, on both parts, for that purpose: but yet the king would not conclude anything without the consent of his lords and commons; wherefore he demanded of them, in the king's name, whether they would assent and agree to a peace, if it might be had by treaty? to which the commons answered with one accord, that what should be agreeable to the king and his council in making of this treaty would be so to them: but being asked again, whether they consented to a perpetual peace, if it might be had, they all unanimously cried out, *Ouy, ouy, Ay, ay.* Mr. Tyrrel observes upon this, that parliamentary proceedings were not then reduced to that form and regularity which they have been brought to since that time; the commons here giving their opinion *viva voce*, and in the presence of the lords, to what the king demanded.

P. 288. *But the assembly of the nobles was convened with more ease, and appears to have acted, not only as a council of state and supreme court of judicature, but, as being authorised, by permission and common consent, to exercise some degree of parliamentary power, the limitations of which were not accurately defined.*

The words of Sir H. Spelman on this subject BOOK II.
 are remarkable: “Magnum concilium plerumque
 “intelligitur de summo illo concilio totius regni V. Spelman's
Gloss. MAG-
NUM CONCIL-
LIUM.
 “(quod parlamentum vocant) è tribus ordinibus
 “constitutum. Sub hoc autem nomine contine-
 “tur aliàs *aristocraticum illud, quod ad ardua etiam*
 “*regni negotia cogeant aliquando reges veteres con-*
 “*simili brevi quo et ipsum parlamentum, sed præter-*
 “*missa plebe, et minori solennitate.* In magno enim
 “concilio, quod tenuit Edwardus III, anno regni
 “sui 15, circa festum translationis Thomæ Mar-
 “tyris (quod erat 7 die Julii), nec 40 dierum ratio
 “in ejusdem summonitione habebatur, nec *baro-*
 “*num omnium* convocatio: sed cum in parlamento
 “Westmonasterii immediate jam tum præcedente,
 “54 enumerati essent (præter episcopos) seculares
 “proceres, hinc Londini evocabantur 22 tantum-
 “modo. De magno consilio fit sæpe mentio in
 “annalibus nostris; sed *de quo prædictorum genere*
 “*intelligendum fuerit sæpe etiam dubitatur.* Archiva
 “consule.”

The uncertainty how to distinguish these different councils in the accounts of ancient authors, which Sir H. Spelman here mentions, has occasioned much of the perplexity and variety of opinions among learned men about the share that the commons had in the parliaments of this kingdom before the forty-ninth of Henry III. For a long time we can have no assistance from our archives, to which he refers us; nor, when they can be consulted, do they always afford so clear a light as might be desired.

P. 229. *The same magnificence in feasting was continued by his successor, but dropt by Henry the First.*

The

BOOK II.

L. iii. f. 63.

The words of William of Malmfbury, from whence I take this account, are as follows: "*Convivia in præcipuis festivitibus sumptuosa et magnifica inibat. Natale Domini apud Glocestriam, Pascha apud Wintoniam, Pentecosten apud Westmonasterium, agens quotannis quibus in Angliâ morari liceret. Omnes eo cujuscunque professionis magnates regium edictum accersibat, ut exterarum gentium legati speciem multitudinis, apparatusque deliciarum mirarentur. Nec ullo tempore comior aut indulgendi facilius erat, ut qui advenerant largitatem ejus cum divitiis conquadrare ubique gentium jactitarent. Quem morem convivendi primus successor obstinate tenuit, secundus omisit.*"

By the last paragraph I do not understand that Henry the First laid aside the usual meetings of the nobility, for the dispatch of public business, at Christmas, Easter, and Whitsunday; but only that he omitted the custom of feasting with them in the liberal manner that had been practised by his father and brother; or, at most, that he did not constantly summon those assemblies as they had done.

P. 231. *Although, in the twenty-first year of Richard the Second, the commons had shewn in a petition to the king, how that before those times many judgements and ordinances, made in the times of the progenitors of our lord the king in parliament, had been repealed and disannulled, because the state of the clergy were not present in parliament at the making of the said judgements and ordinances.*

In this petition the judgements may be understood to refer more particularly to the prelates, who had absented themselves from trials in the house of lords; but, in the making of ordinances, the clergy of the lower house were concerned, as well as those
of

of the upper. Accordingly it appears, that, in consequence of this petition, a proctor was appointed to act for *them*, as well as for the prelates. And Bishop Burnet takes notice, that in the second act of the same parliament (viz. in the twenty-first of Richard II.) it is said, "That it was first prayed
 " by the commons, and that the lords spiritual, and
 " *the proctors of the clergy*, did assent to it; upon
 " which the king, by the assent of *all the lords and*
 " *commons*, did enact it." He adds, "That the
 " twelfth act of that parliament was a repeal of
 " the whole parliament, that was held in the ele-
 " venth year of that reign; and concerning it, it is
 " exprest, that the lords spiritual and temporal, *the*
 " *proctors of the clergy*, and the commons, being
 " severally examined, did all agree to it. From
 " hence it appears, *that these proctors were not only*
 " *a part of the parliament, but were a distinct body of*
 " *men, that did severally from all the rest deliver their*
 " *opinions.*"

P. 233. *The presence of the people in the Saxon councils, and their having had a share in the highest acts of legislature and government, even till the entrance of the Normans, seems to be proved very strongly from the preambles of laws and other proceedings of those counsels, and from the words of the best historians who lived near to those times.*

The preface to Ina's Laws is thus translated by Wilkins: "Ego Ina occiduorum Saxonum rex,
 " cum consilio et cum doctrinâ Cenredæ patris mei,
 " et Heddæ episcopi mei, et Erkenwoldæ episcopi
 " mei, et cum omnibus meis senatoribus, et senioribus
 " sapientibus populi mei, et multa etiam societate mini-
 " strorum Dei, consultabam de salute animæ nostræ,
 " et de fundamento regni nostri; et justæ leges, et
 " justa

BOOK II. "iusta statuta, per ditionem nostram, stabilita et
"constituta essent," &c.

By these words it appears, that the Saxon legislature was composed of the king, *cum omnibus suis senatoribus*, which senators I take to have been the nobility of the kingdom, such as afterwards formed the ordinary council of lords under our kings of Norman race; et *cum senioribus sapientibus populi sui*, by whom I understand the deputies or representatives of the people, either by election or magistracy; et *cum multa etiam societate ministrorum Dei*, which words evidently denote the inferior clergy, mentioned by Eadmer as present in the parliaments of his times.

V. Spelman's
Councils, sub
ann. 855.

In the year 855, Ethelwolph, king of the West-Saxons, gave to the church the tythe of his kingdom, "*cum consilio episcoporum et principum, presentibus et subscribentibus archiepiscopis et episcopis Angliæ universis, nec non et Beotredo R. Mercie, et Edmundo Estanglorum R. abbatum, et abbatissarum, ducum, comitum, procerumque totius terræ, aliorumque fidelium infinita multitudine, qui omnes regium chirographum laudaverunt, dignitates vero subscripserunt.*" By this last paragraph it appears, that the act or decree of the council was approved by all present, though subscribed by none but the nobility, or dignified persons. The Saxon constitution therefore required not only the presence, but the approbation of the people, to the enacting of a law: yet, to mark the distinction, between these and the higher orders of the state, the nobility alone set their hands to the act. The *proceres totius terre* here mentioned will take in all the Thanes, and perhaps the *seniores sapientes regni*. By the words *aliorumque fidelium infinita multitudine*, I understand an unlimited number of freeholders, the same as the *populi numerositas, et assistentem monachorum*,
rum,

rum, clericorum, laicorum numerosam multitudinem, mentioned by Eadmer, and the *Vulgus* spoken of by the author of the acts of King Stephen. The late Sir John Fortescue Aland, one of the justices of the King's Bench, who was very learned in the Saxon language and legal antiquities, says, in his Preface to the Book of Chancellor Fortescue on the difference between an absolute and limited monarchy, "that whoever carefully and skilfully reads the Saxon laws, and the prefaces or preambles to them, will find, that the commons of England always in the Saxon times made part of that august assembly."

There is a remarkable passage in Henry of Huntingdon, concerning the deposition of Sigebert, king of the West-Saxons. "Sigebertus rex, in principio secundi anni regni sui, cum incorrigibilis superbiæ et nequitix esset, congregati sunt principes et populus totius regni, et provida deliberatione, et unanimi consensu omnium, expulsus est a regno. Kinewelf vero, juvenis egregius, de regia stirpe oriundus, electus est in regem." Here we see that the Saxon people concurred with the nobility, both in deposing and electing a king, and that it was not done in a tumultuous manner, but *provida deliberatione et unanimi consensu*, words which express a parliamentary deliberation and consent. Henry of Huntingdon wrote early in the reign of Henry the Second, when the memory of the Saxon customs could not be worn out in England, and certainly took this part of his history from some more ancient chronicle. The words are also transcribed by Roger de Hoveden, in his *Annals*, without any correction.

Sir H. Spelman says, "it seemeth by those synods that were holden in the times of the Saxon kings, and by some after the Conquest, that great numbers of the common people flockt thither." For

V. H. Hunt.
Hist. lib. iv.
f. 196.

it

BOOK II. it is said in ann. 1021, "*cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa.*" And ann. 1126, "*innumeraque cleri et populi multitudine.*" and so likewise in ann. 1138, and other *synods and councils*. By what order or limitation this *innumera populi multitudo* came to these assemblies appeareth not. (See Spelm. of Parliaments, p. 64.)

Lib. iii. f. 56. William of Malmesbury, in a passage I have cited before, relates an answer sent by Harold to the duke of Normandy's charge of his having broken the oath, by which he had promised to aid that prince in his pretensions to England. The words are these: "De regno addebat præsumptuosum fuisse, quod *absque generali senatus et populi consensu et edito* alienam illi hæreditatem juraverit." This is a plain declaration, that, by the Saxon constitution established in England, *the people*, as well as the nobles, had a right to be called to *the general assembly*, upon affairs of great moment, and to join in the *edicts* made there; so that, without *their consent*, the succession to the crown could not be disposed of. It is observable, that the historian uses the word *senatus* in the same sense as we find it in the before-cited preamble to the laws of King Ina, for the ordinary assembly of the nobles, which he distinguishes from *the people*, but supposes that the latter ought to be joined to the former, in order to compose the entire legislature and great council of the nation upon extraordinary occasions. This was agreeable to the custom ascribed by Tacitus to the Germans, from whom they sprung: "*De minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum apud plebem arbitrium est, apud principes pertractentur.*" And I think it apparent, that the same form of government continued in England during the reigns of all the kings treated of in this work; some clear traces

traces of it remaining till much later times. But, BOOK II.
 as the feudal system was more favorable to the aristocratical than to the popular power, the *lesser senate* by degrees usurped much of the authority that belonged to the greater; and even in the general assemblies the nobles were so predominant, as to leave the people little power, till the relaxation of that system, the encrease of wealth among the commons, and other changes in the political state of the kingdom, which it would take up too much time to enumerate here, gave more regularity and a better balance to the whole legislature.

We are told by the Book of Ely, that, in Edward the Confessor's reign, the brother of an abbot, though nobly born, could not be reckoned among the nobility of the kingdom, because he had not an estate of forty hides of lands. "*Quoniam ille quadraginta hidarum dominium minime obtineret, inter proceres tunc numerari non potuit*:" and therefore he was refused by a lady, whom he sought in marriage, till his estate was encreased to that magnitude by grants of land from his brother. This passage is remarkable, because it shews that a certain portion, and that a very large one, of landed property *in dominio* was a necessary qualification, under the Anglo-Saxon government, to admit any person to *the rank and degree of nobility*. Whether this continued under the Normans I find no proof; but it must be observed, that no argument can be justly drawn from hence, that, to be qualified for a place in the Saxon great council, or *witenagemot*, it was requisite to be lord of forty hides of land. Nothing like it is said here, nor does such a notion agree with any accounts that are given us of that assembly in the writings or records

V. Histor.
 Elenf. lib. ii.
 c. xi.
 Gale's Hist.
 Brit. Script.
 vol. i. p. 513.

BOOK II. cords of those times. But if the *lesser senate* was composed of none but the *proceres*, as there is reason to believe, this passage will be a proof, that, without such an estate or lordship, no person could sit *there*.

P. 234. *For the property of the commons was so unequal to that of the nobles, and the feudal obligations of the inferior landholders to the lords they held under created such a dependance of the former on the latter, that, although in the idea and scheme of the government a popular power was mixed with the regal and aristocratical, yet, in reality, the scale of the people was not weighty enough to make a proper counterpoise to either of the other.*

All this must be very evident to any person who reads the history of this kingdom, or looks into its laws. But another reason may be added, to account for what appears in many rolls of parliament, long after the period contained in this work, that the commons declined to give their opinion or advice to the crown, in certain matters of state, and submitted their judgement thereupon to the king and his council, or to them and the lords. While the representatives of cities, towns, and boroughs, were chosen only out of persons residing therein, they were, for the most part, people of low degree and condition, whose education and way of life rendered them very unfit to judge of arduous questions concerning foreign affairs, and treaties with foreign states. Accordingly we find, that, in the seventh of King Richard the Second, the commons being much prest to give their opinions on a treaty of peace with France, *before the conclusion thereof, declared, they knew not what to say; because in the articles*

articles were contained many terms of the civil law which they understood not; and in the seventeenth of the same king, they pleaded want of capacity to give their judgement or advice on the articles of a peace, in which were contained the law-terms of homage lige, souveraineté, et ressort, for which they referred themselves to what the lords, knights, and judges, had before agreed upon. Here we see that the knights of shires were not supposed to be under the same incapacity as the rest of the commons. It was therefore an alteration very beneficial to the importance of the commons in parliament, when gentlemen of liberal education were admitted to serve for cities, towns, and boroughs. The revival of learning in the sixteenth century, and diffusion of it among the gentry during the next hundred years, contributed also to fill the house of commons with able and knowing men, who had no need to have recourse to the other house of parliament, or to the king's council, for the explaining of terms of law, or the articles of a treaty with any foreign power. But it will be proper to observe, that even in the earliest times, so far back as we have any rolls of the parliament, all the commons appear to have given their advice with great freedom in matters concerning the internal government and order of the kingdom. What they declined to advise in, upon some occasions, were questions that related to the making of peace or war; as, for instance, in the twenty-first and twenty-eighth years of King Edward the Third; and sixth, seventh, and seventeenth, of Richard the Second. In one of these, namely, the seventh of Richard the Second, they were told by the chancellor, "that he was to shew them certain articles, wherein, although the king himself might well conclude, yet, for good will, he would not, without

See the Rolls of those years

VOL. III. G g " their

BOOK II. "*their knowledge and consent.*" To this they answered, not imprudently, *that it becomed not them to intermeddle with their council therein, and referred it to the king and council.* Certainly there was a great difference between exercising the proper parliamentary power of judging of the articles of a peace concluded, and of calling the ministers to account if they had advised the king ill in the exercise of his prerogative, or authorising them to conclude particular articles by a *previous advice.* But in all these instances it is remarkable, how great a regard was shewn by these kings to their parliaments, even in points which belonged to the royal prerogative! Such a conduct in such a prince as Edward the Third, crowned with victory and with glory above all other monarchs, is an evident indication, that *to govern by parliaments* has been the policy of this kingdom under the wisest and best kings, from the earliest times.

See Hume's
Hist. of Eng-
land, p. 91.
vol. ii. note.

A late author has cited Sir Robert Cotton's Abridgement of the Records in the Tower, to shew that the commons, in those times, *were much below the rank of legislators.* He says, "the king told the commons, that they were only petitioners, that is, *they had not any proper legislative authority.*" But I will give the whole passage as it stands in the book itself, that the reader may judge on what authority this construction is founded. The words are these: "The duke of York, and earl of Northumberland, and others of the blood of the archbishop of Canterbury, pray the king, that the same archbishop might have his recovery against Roger Walden, for sundry wastes and spoils done by the said Roger in the archbishoprick aforesaid, whereto the king granted, and thanked them for their motion. The commons on the 30th of November pray, *that, farasmuch*
" as

See Cotton's
Abridgement
of the records
in the Tower,
p. 392
1 Hen. IV.

“ as they were not made privy to the judgement afore-
 “ said, no record be made to charge or to make them BOOK II.
 “ parties thereunto; whereupon the archbishop of
 “ Canterbury, by the king’s commandment, an-
 “ swered, that the commons were only petitioners,
 “ and that all judgements appertain to the king and
 “ to the lords: unless it were in statutes, grants,
 “ subsidies, and such like, the which the king would
 “ from that time cause to be observed.” It is evi-
 dent, that the legislative power of the commons, instead
 of being denied, is expressly confirmed by this answer.
 They are truly told, that the power of judicature
 appertains not to them, but to the king and the
 lords; and this was the question to which their
 prayer related: but in statutes they were to judge,
 as well as in grants, subsidies, &c. Certainly their
 being petitioners was no argument of their not being
 legislators: since the course of proceedings then was,
 that their petitions, if assented to by the lords and
 the king, should be turned into statutes; as
 all the old records of parliament unquestionably
 shew.

P. 235. *The execution of all laws was entrusted to the king; and none could be made, repealed, or altered, without his assent.*

This has been always the royal prerogative in this kingdom: but the dispensing with laws began no earlier than the reign of Henry the Third, by an insertion of the clause of *non obstante* into grants and patents, after the example of the papal power. Matthew Paris calls this *detestabilis adfectio*; and what the king’s judges at that time thought of it appears from this passage in the same contemporary historian. “ Quod cum comperisset quidam vir
 “ discretus, tunc justiciarius, Rogerus de Thurke-

BOOK II.

V. Parliam.
Hist. vol. i.
p. 46.

“ by, ab alto ducens suspiria de prædictæ adjectionis appositione, Heu heu, hos ut quid dies expectavimus? *Ecce jam civilis curia exemplo ecclesiasticæ coinquinatur, et à sulphureo fonte intoxicatur.*” The parliament likewise complained, *that the church and kingdom suffered infinitely by reason of the clause of non obstante, which weakened and enervated all oaths, ancient customs, written laws, grants, statutes, and privileges.* When King Richard the Second said (as he is charged to have done in one of the articles exhibited against him in parliament), *that his laws were in his mouth, or in his breast, and that he himself alone could make and change the laws of his kingdom*; he totally departed from all the notions of the ancient constitution, and by acting upon such principles, infused into him by foreigners, he dissolved the bonds of allegiance, and *deposed himself.*

During the violence of the civil wars between the two houses of York and Lancaster, and the frequent revolutions that happened in the government, the whole frame of the constitution was shaken and injured: but how strongly the fundamental notions of liberty were still prevalent in the breasts of honest and knowing men, appears from the admirable treatise of Fortescue on absolute and limited monarchy. He, who had been raised to the highest offices of the law under Henry the Sixth, was not afraid to affirm under Edward the Fourth, with the same freedom as in another part of his writings he had spoken to his royal pupil, the son of Henry the Sixth, that “ *rex datur propter regnum, et non regnum propter regem. Wherefore all that he doth ought to be referred to his kingdom. For though his estate be the biggest estate temporal upon earth, yet it is an office in the which he ministereth in his realm*

See Fortescue
on absolute
and limited
monarchy,
c. viii.

“ *realm defence and justice. And therefore he may* ”
 “ *say of himself, as the pope saith of himself and of* ”
 “ *the church, in that he writeth servus servorum* ”
 “ *Dei.* ” This author also founds the original of
 our government on a number of people *incorpora-*
ting and uniting themselves into a realm under one head,
or king ; says, “ they ordained the same realm to be
“ ruled by such laws as they would all assent to : ”
 which he affirms to be the only *political government,*
and absolute monarchy to be mere tyranny. Such were
 the notions of our ancestors, in the reign of Edward
 the Fourth. Nor does Bracton, or Glanville,
 speak a different language. But, on the other hand,
 they had no idea of degrading our kings into mere
doges of Venice, divested of all royal power. And
 some of our over-zealous whigs would do well to
 consider, that, by thus lowering the monarchical
 part of our government, they would as much de-
 stroy the symmetry and strength of the whole, as
 those who seek to raise it higher than the just pro-
 portions of a mixed and limited monarchy will ad-
 mit. Even allowing, what I think can never be
 allowed, that a republick in itself is a better form
 of government for a great and opulent country,
 than a mixed and limited monarchy ; it does not
 follow from thence (as these gentlemen seem to
 believe), that by bringing the latter nearer to the
 former they shall make the latter more perfect.
 For the perfection of it consists in the equal poise
 of the three constituent parts. Whether that poise
 be destroyed by throwing too much weight on the
 side of the king, or of the nobility, or of the peo-
 ple, the mischief is the same.

P. 237. *The wealth of the crown, in the times
 of which I write, was a great support of its
 power.*

BOOK II.

Ordericus Vitalis, a contemporary historian, says, that, out of the settled revenues of England, one thousand and sixty pounds of sterling money, thirty shillings and three farthings, were reported to be paid every day to William the First, besides the gifts, fines, or amercements, and many other articles, which continually increased the royal treasure. “*Ipsi vero regi (ut fertur) mille et sexaginta libræ sterilenfis moneta, solidique triginta et tres oboli, ex justis redditibus Angliæ, per singulos dies redduntur, exceptis muneribus regiis, et reatum redemptionibus, aliisque multiplicibus negociis quæ regis ærarium quotidie adaugent.*” It is observable, that the historian does not give us this account upon his own knowledge, but upon report (*ut fertur*). Yet one would suppose, that his information was very particular, as he mentions even the farthings. And the way in which he counts, viz. one thousand and sixty pounds and thirty shillings, instead of one thousand and sixty-one pounds ten shillings, is still used in the Exchequer. Yet the sum is so great as justly to occasion a doubt: for, the pounds here mentioned being pounds *in weight*, which contained in them as much silver as three of our present pounds sterling; and the shillings not being coins of that denomination, but signifying the twentieth part of a pound weight of silver, which makes one of them equivalent to three of our shillings; this receipt amounts to three thousand one hundred and eighty-four pounds ten shillings of our money, not reckoning the farthings. Multiply this by 365, the produce will be 1,073,985 of annual income; which being also multiplied by five (the lowest computation of the value of silver in those days beyond the present), the sum produced by it will be 5,369,925, exclusive of all the casual profits of the crown, which in those days were very high.

Though

L. iv. p. 523.
apud Duchet.

Though William Rufus was very lavish in his gifts and expences, it does not appear that he alienated any part of the ancient inheritance of the crown. For no resumption was made of his grants by his successor, nor any complaint of the crown's being deprived of its patrimony: but, on the contrary, that prince's opulence is noted by all the contemporary historians. A modern historian as-

BOOK II.

Daniel, p. 44.

firms indeed, that William Rufus, about the latter end of his reign, *resumed his own grants*; but no proof of this is found in the contemporary writers.

L. iv. p. 69.
de W. II.

William of Malmesbury says, that, when he had spent all the treasures of his father, he made up his losses by rapines. *Itaque, quum defecisset quod daret, incops et exhaustus, ad rapinas convertit animum.* Upon the whole, there appears no good reason to believe, that the estate of the crown was much diminished before the reign of King Stephen, all whose grants, excepting those he had made to the church, were resumed by Henry the Second. It appears from a

letter to the pope from the English parliament, in the reign of Henry the Third, that the clear revenue of the kingdom was then below sixty thousand marks *per ann.* The words are these: "*Ita-*

V. M. Paris
Hist. Angliæ,
p. 666. sect.
30. sub ann.
1245. edit. 1.

"*lici percipientes in Angliâ sexaginta millia marca-*

"*rum, et eo amplius annuatim (aliis perceptioni-*

"*bus diversis exceptis) plus emolumenti meri reddi-*

"*tus de regno reportant quam ipse rex, qui est tutor*

"*ecclesiæ, et regni gubernacula moderator.*" The

P. 658. sect.

historian says, in another place, "*Et inventa est*

50.

"*summa reddituum eorum annuatim sexaginta*

"*millia marcarum; ad quam summam non attingit*

"*redditus annuus totius regni Angliæ.*" But in both

these places is meant, not the king's private patrimony, or landed estate, but the public revenue of the kingdom, which is often distinguished from the other in our ancient records.

BOOK II.

V. Cotton.
 Librar. Julius
 B. xiii.

In a manuscript treatise of Giraldus Cambrensis, *De institutione regis*, it is said, that the annual *fiscal* revenues amounted, in the time of Edward the Confessor, to just the same sum. "*Angliæ regnum Anglorum tempore, et penultimi Edwardi Westmonasteriensis diebus, annui fiscales redditus, sicut Rotulo Wintoniensi reperiuntur, ad sexaginta millia marcarum summam implebant.*" By the annual *fiscal* revenues I understand the ancient inheritance of the crown: for Bracton says, "*Est res quasi sacra res fiscalis, quæ dari non potest, nec vendi, nec ad alium transferri à principe vel à rege regnante.*" But little regard is due to this evidence of Giraldus: for immediately afterwards he says, that in Henry the Second's time, by the continual grants made to soldiers, both from that prince and from Stephen, and by the wars between them, and afterwards with France, these *fiscal* revenues were brought down to *twelve thousand marks*: but he forgets that all the grants made by Stephen, or Matilda, except those to the clergy, were resumed by Henry the Second at the beginning of his reign; and no other author has said, that this prince, for the maintenance of his wars against France, ever alienated any part of the patrimony of the crown.

L. ii. c. 5.

Ibid. It is therefore evident, that a vast share of the lands of England was possessed by Henry the Second, which was a constant support to the royal dignity, independent of all taxes or impositions on his subjects, and which was considered as a sacred and inalienable patrimony, transmitted to him from his ancestors, the ancient kings of England; &c.

In one of the articles exhibited in parliament against King Richard the Second, it is said, "that whereas
 " the

“ the king of England, by the revenue of his king-
 “ dom and the patrimony belonging to his crown, is BOOK II.
 “ able to live honorably (*bounelement*), without
 “ the oppreſſion of his people, as long as the king-
 “ dom is not burdened with the charge of wars; yet
 “ the ſaid king, in a manner for his whole time,
 “ during the truces between the kingdom of Eng-
 “ land and its adverſaries, hath not only given
 “ away a great, yea indeed the greateſt part of his
 “ ſaid patrimony, and this to unworthy perſons, but
 “ alſo hath further impoſed on his ſubjects ſo many bur-
 “ dens of monies granted, as it were every year of his
 “ reign, that thereby he hath extreemly, and too
 “ exceſſively, oppreſſed his people, to the impove-
 “ riſhment of his kingdom, not converting the ſums
 “ ſo levied to the advantage and profit of the realm of
 “ England, but prodigally ſquandering it away
 “ for the oſtentation of his name, and in pomp
 “ and vain-glory, whiſt great ſums of money are
 “ owing in his kingdom for the victuals of his houſe-
 “ hold, and other things bought, though he hath
 “ abounded with riches and treasures more than
 “ any of his progenitors.”

In this remarkable article is very clearly ſet forth the whole policy of our anceſtors, with regard to the different provisions they made for the crown. Its ſupport in time of peace was the patrimony belonging to it and the revenue of the kingdom. But in war they ſuppoſed it neceſſary, that the extraordinary charges ſhould be ſupplied by grants from parliament. The burthening the people with ſuch grants, or other impositions, in time of peace; the miſapplying them to vain-glory, while the charges of the houſehold were unpaid; and the giving away the ancient patrimony, intended for the maintenance of thoſe charges and of the honor and dig-
 nity

BOOK II. nity of the crown; are considered by them as offences against the duty of a king.

Chief Justice
Fortescue.

There is also a passage, in the treatise of Lord Fortescue on absolute and limited monarchy, which is very pertinent to this subject. For the greater ease of the reader, I shall give it in modern English and spelling. "The king, our sovereign Lord, " had, at times, since he reigned over us, provision, " in lordships, lands, tenements, and rents, *near* " *the value of the fifth part of his realm, exclusive* " *of the possessions of the church; by which provision,* " *if it had constantly abided in his hands, he had been* " *more mighty in good revenues than either of the said* " *two kings (viz. the Soldan of Egypt and the* " *king of France), or any king that now reigns in* " *Christendom.* But this was not possible: for to " *some part thereof the heirs of them that sometime* " *owned it are restored; some by reason of entails;* " *some by reason of other titles, which the king* " *has considered, and thought them good and reason-* " *able.* And some part of the same provision his " good grace has given to such as have served him " *so signally, that, as their renown will be eternal,* " *so it befitted the king's magnificence to make their re-* " *wards everlasting to their heirs; for his honor* " *and their perpetual memory.* And also the king " has given part of the said provision to his most " *honorable brethren, who not only have served him* " *in the manner aforesaid, but are so near in blood to* " *his highness, that it befitted not his magnificence to* " *have done otherwise."*

From hence it appears, that in the reign of Edward the Fourth, when this treatise was written, the wealth arising to the crown from its landed estate and casual profits, exclusive of subsidies and grants by parliament, was sometimes equal to one fifth

fifth of the lay-property of the kingdom ; but that many of these profits were only temporary, and could not, from the nature of them, be retained by the king. On this I would observe, that, in some periods of the reign of Edward the Fourth, the estate of the crown must have been greatly increased by the forfeitures of the Lancastrian nobles, and by the escheats that must have fallen into the hands of the king upon the extinction of heirs male in many noble families of his own party, during the bloody civil wars, with which the realm was then infested. Of the forfeitures a great part, before the writing of this treatise, had been granted away by the king to those of his own adherents who had done him good service. And we see that Fortescue thought such grants not illegal or improper. But of that great lawyer's opinion and advice, on the subject of the royal revenue, I shall have occasion to say more in a subsequent note. I will only add here, that in another chapter he says, "*it was undoubted that* C. viii. "*the king had a sufficient provision for his ordinary charges.*"

P. 239. *These inquisitions, or verdicts, were first methodised in the country, and afterwards sent up to the king's Exchequer.*

In the archives of the church of Exeter are contained the returns for the counties of Wilts, Dorset, Somerset, Devon, and Cornwall, compiled from the original verdicts given in by the juries to the commissioners appointed for the making of that survey. I have been favored with the sight of some very curious observations made on these manuscripts, and on the lesser and greater Domesday-books, by the learned and ingenious Dr. Milles, dean of Exeter, which, when published, will give more light and instruction on this subject, than

BOOK II. than the world has yet received from any other writer.

The book of Ely, from which I have taken the account of the manner in which the inquisitions were made, consists of two parts, the first containing the possessions of the church of Ely extracted from the original verdicts, which verdicts for fifteen out of the seventeen hundreds of Cambridgeshire are contained in the second part.

P. 243. *The greater escheats were let at farm, or committed to the custody of persons appointed by the king, to whom they accounted for the profits.*

Hist. of the
Excheq. c. x.

Mr. Madox says, of these escheats, that, "after they had been long vested in the crown, they were hardly to be distinguished from the king's ancient demesne." But in this there seems to be some inaccuracy. For it must always have been easy to distinguish escheated baronies, and estates held by knight-service, from the king's ancient demesne; because all tenants in *that demesne* held by socage. And Mr. Madox himself says, in another

V. Baroniam,
l. i. c. i. p. 11.

part of his works, that a manor, *which was part of the ancient and original inheritance of the crown*, could not be called an honor, because it never was a barony, or in the *feign of an earl or baron*. This must therefore have prevented any confusion in the accounts of *the ancient demesne lands, and of any honors or baronies escheated to the crown*. But it was necessary to distinguish between honors or baronies held originally of the crown, and those devolved to it by escheat; because, in the latter case, the tenants, who before had held of the baron, became the tenants of the king, *non sicut de corona*, but in the same manner as they had answered for their services to the baron. Which distinction may have been

been lost when they had been long escheated, and retained by the king, before the escheatry was formed, but, I think, not afterwards. BOOK II.

P. 247. *And therefore when writers say, that the lands of the crown were inalienable, it must be understood only of those in ancient demesne, not of these incidental or casual possessions.*

This difference is well attended to and expressed v. Rot. Parl. by the commons, in their petition to King Henry ^{6 Hen. IV.} the Fourth for a resumption of grants in the sixth ^{n. 14} year of his reign. “ Forasmuch as the crown of
“ the realm of England has suffered great dispa-
“ ragement and diminution (*est grantement emble-*
“ *missée et aneantissée*) by great and excessive grants,
“ made to diverse persons as well spiritual as
“ temporal, of lands, tenements, fee-farms, fran-
“ chises, liberties, and other possessions; be it
“ enacted in this present parliament, for the profit
“ of the king and of the realm, and for the sup-
“ port of the commons, that all castles, manors,
“ lordships, lands, tenements, fees, and advow-
“ sons, fee-farms, annuities, franchises, liberties,
“ and customs, *which were members and parcels of*
“ *the ancient inheritance of the crown* in the fortieth
“ year of the reign of King Edward grand-father
“ of our Lord the present King, and from that
“ time, whether given for life or for a term of
“ years, in fee-simple or in fee-tail, or conditionally,
“ or to the spiritual lords for themselves and their
“ successors, *except wardships, marriages, and es-*
“ *cheats*, and what has been assigned to the queen
“ in dower, should be entirely resumed, recovered
“ and seized into the hands of our Lord the king,
“ *and rejoined to the crown, to remain perpetually an-*
“ *nexed to it, without being ever for the future, by*
“ *any means or device whatsoever, separated from it,*
“ saving

BOOK II. "saving the grants made at, or after, the term
 "beforementioned, of any parcels of the said an-
 "cient inheritance of the crown, *by special charter*
 "confirmed by the authority of parliament."

Here the distinction between the ancient inheritance of the crown, and escheats or casual profits, is evidently marked out: and as for the confirmation given to grants *out of the ancient inheritance* made in or before the fortieth of Edward the Third, it was necessary, for the avoiding of the inconvenience and injustice that must always attend *the looking back too far* in acts of resumption. Nevertheless the desire of giving ease to the people induced the parliament to advise, that during the continuance of heavy wars, or at times when the crown was greatly oppressed with debts, all such casual profits might remain in the hands of the king for his own use and benefit. Thus, in the fifth year of Edward the Second, an ordinance was made, that, *to pay the debts of the king, and raise up his state, and maintain it more honorably*, no grant of land, or rent, or franchise, or *escheat*, or of *wardship* or *marriage*, or of *bailiwick*, should be made &c. *till his state should be raised up*, &c. And thus, in the first year of Richard the Second, the commons prayed for an enquiry into the grants of castles, towns, lands, tenements, *bailiwicks*, *wardships*, *marriages*, *escheats*, and *reliefs*, made by Edward the Third, to see whether they had been worthily or unworthily bestowed; that where they had been properly given, they might be confirmed; but where the king had been deceived, they might be resumed, and not granted again to the same persons, or any others, *till his debts were paid, and a better provision made for the princes his sons*. In the fifth of the same king, the commons again petitioned, that no grant should be made of any land,

V. Rot. Ord.
 5 Edw. II.
 n. 3.

V. Rot. Parl.
 1 R. II. n. 48.

V. Rot. Parl.
 5 R. II. p. 1.
 n. 74.

land, rent, marriage, or any kind of escheat, to any BOOK II.
 person whatsoever, till the king should be out of debt,
 and out of such charges of war as lay upon him at that
 time.

But the king only promising, that he would
 make no new grants without the consent of the lords
 and others of his council, they renewed their peti-
 tion the next year, that all kinds of wardships, mar-
 riages, reliefs, escheats, forfeitures, and all other pro-
 fits, might be kept for the king's wars and the defence
 of his kingdom, in support and aid of his poor com-
 mons, and not otherwise bestowed. To which he
 also returned no other answer, than that he was
 willing and desirous to proceed in this matter by
 the advice of the lords of his kingdom, as it should
 seem to him most conducive to his honor and profit.
 Yet in his ninth year he consented to the desire of
 his parliament, that all his revenues should be laid up
 for one whole year, without any diminution thereof by
 gift or grant. And in his eleventh year the com-
 mons prayed, that all forfeitures lately incurred
 of lordships, lands, &c. and all escheats and other
 profits, which had fallen, or should fall, into the
 hands of the king, by any means whatsoever,
 might remain in them during the wars, to discharge
 his debts, and in aid of the maintenance of his state,
 and also for the ease and relief of the poor commons of
 his realm: which he granted with some restrictions.
 So likewise, in the eleventh of King Henry the
 Fourth, the commons prayed, that no grant be
 made of any hereditaments or other profits of the
 crown, except offices and bailiwicks, till all the
 debts then due from the king to his subjects should be
 entirely discharged, and with enough remaining in
 the hands of the king and his royal successors for the
 reasonable support and maintenance of his household,
 chamber,

V. Rot. Parl.

6 R. II. n. 42.

V. Rot. Parl.

9 R. II. n. 42.

V. Rot. Parl.

11 Hen. IV.

n. 23.

BOOK II. *chamber, and wardrobe*: which the king assented to with some reservations.

It would be tedious to give more instances of the same nature; but I will add, that, when any feignory had been annexed to the crown by act of parliament, the parliament considered the lands belonging thereunto as being equally inalienable with the ancient inheritance of the crown: and, no doubt, with good reason. It must also be noted, that on the ancient demesnes of the crown were built many royal castles and fortresses held by knight-service or castle-guard, which, when alienated by our kings, were very properly and justly resumed; as we find to have been done, with the advice and consent of parliament, by Henry the Second. But, if *all escheats, forfeitures, and other casual profits*, had been likewise deemed inalienable, the crown, perpetually receiving, and rendering nothing back, would soon have drawn to itself, by means of these incidents, all the lands and wealth of the kingdom. Nevertheless, in the treatise of Lord Chief Justice Fortescue, cited before in these notes, King Edward the Fourth is advised, that, in order to answer extraordinary and sudden charges, for which he could not have the ready assistance of his parliament, a perpetual provision should be made, by a general resumption of all the lands he had granted away (except those given to his brothers, and some others who had signally served him); which resumption should be authorised by act of parliament, and at the same time a great subsidy should be granted to the king for the rewarding in money those grantees, who, by the opinion of a council to be established for that purpose, should be found to have deserved it. All the lands thus redeemed he proposed to annex for ever to the crown, so as not to be alienated without consent of

See Fortescue on absolute and limited monarchy.

Ibid. c. xi.
p. 84. c. xiv.
c. xix.

of parliament: to support which advice he gives BOOK II.
 many weighty arguments, such as the mischiefs C. v.
 that must ensue to a realm from the poverty of a
 king, which he most judiciously sets forth; and
 the evils that would follow his relieving his neces-
 sity by impoverishing and oppressing the commons.
 He likewise displays very wisely the great peril to C. iii. iv. x.
 the state, if any nobleman has more to spend than
 the king; for which reason he intimates, that the
 king, in disposing of his noble wards in marriage,
 should prudently take care, that too great additions C. x. p. 76,
 might not be made to their wealth; and that he
 should increase his own by the casualties of escheats
 and forfeitures, and also by purchasing land from
 such of his nobles as were desirous to sell, which
 none could do without his licence. On all this I
 would observe, that every good purpose, proposed
 by this able lawyer and wise statesman, is much
 better answered by our present method of provid-
 ing for the maintenance of the honor and dignity
 of the crown, in settling on the king, for his life,
 a clear annuity, of such value as may be suffi-
 cient for all charges both ordinary and extraordinary,
 except those which, from the nature of them,
 ought, in good policy, to be reserved for the con-
 sideration of parliament. Thus no danger to the
 state can be likely to arise from *the poverty of the*
king; nor, on the other side, from the balance of
 power being hurt by too great a weight of *landed*
property in the scale of the crown, a danger to
 which it does not seem that our ancestors were
 sufficiently attentive. And the alterations of our
 law with regard to the power of alienating lands,
 with other changes that have happened in the state
 of our nobility since Fortescue wrote, have taken
 away that apprehension he so justly conceived of
 any subjects being made, by the greatness of their
 Vol. III. H h estates,

BOOK II. estates, as powerful as their sovereign. The danger now appears to lie the other way, namely, that the poverty of some of our nobles may, at certain times, make them too dependent on the king; which, while baronies were territorial, could not possibly happen, as there was always, under that constitution of the peerage, a sufficient estate annexed to every honor, for the maintenance of the baron, according to his rank, without his having recourse to the bounty of the crown.

P. 248, 249. *But the highest payments of this nature which I meet with in the rolls, till after the thirty-first year of Henry the Third, were made to that king, by John earl of Lincoln, and by Simon de Montfort; the former of these having given three thousand marks, to have the marriage of Richard de Clare, for the benefit of Matilda, his eldest daughter; and the latter ten thousand, to have the custody of the lands and heir of Gilbert de Unfraville until the heir's full age, with the heir's marriage, and with advowsons of churches, knights fees, and other pertinencies and escheats.*

One still greater payment, being the double of the highest abovementioned, had escaped my observation in another part of Mr. Madox's History of the Exchequer, p. 322. He shews, from the great roll of the second of Henry the Third, that Geoffry de Mandeville gave twenty thousand marks, that he might have to wife Isabel countess of Gloucester, with all her lands and knights-fees; a most enormous sum, considering the value of silver in those days!

P. 254. *I find no account of what was taken by Henry the Second for another feudal due, viz. on the making his eldest son a knight.*

Mr.

Mr. Selden takes notice, in his Book on Titles of Honor, that with respect to our kings this aid continued arbitrary till the statute of the twenty-fifth of Edward III, which put the king in the like condition with ordinary lords, who, by a former statute of the third of Edward I, had been restrained from taking more on this account than twenty shillings from every tenant of a whole knight's-fee, and the same from every one who held lands in socage of the yearly value of twenty pounds, and so *pro rata*; but that none of it should be levied until the son were of the age of fifteen years, which is called by Britton, *l'age pur ordre de chivaler prendre*.

BOOK II.
See part i.
cap. v. sect.

P. 257. *And both these laws seem to refer to a preceding statute, now lost, by which the feudal policy of the Normans had been established in England.*

The words of reference, in one of these statutes, namely, the fifty-fifth, are as follows; "*Prout statutum est eis, et illis a nobis datum et concessum jure hæreditario in perpetuum per commune consilium totius regni nostri prædicti*;" and in the other (the fifty-eighth), "*sicut illius statuimus per commune consilium totius regni nostri prædicti, et illis dedimus et concessimus in feodo jure hæreditario*." Sir H. Spelman, speaking of the latter of these laws, says, "here the word *statuimus* sheweth, that it was the Conqueror's institution; and *concessimus* in *feodo jure hæreditario* implieth, that feuds were not hereditary before *this* grant." By *this* grant, I presume, he does not mean *this* statute, but the grant referred to therein. I cannot agree with the learned author of the *Introduction to the Law of Tenures*, in thinking that both these laws refer to

See Wright's
Tenures,
p. 65 to 74.

BOOK II. the fifty-second of that king, which runs in these words: "*Statuimus etiam ut omnes liberi homines fædere et sacramento affirmant, quod intra et extra univèrsùm regnum Angliæ (quod olim vocabatur regnum Britannia) Willielmo regi domino suo fideles esse volunt, terras et honores illius omni fidelitate ubique servare cum eo, et contra inimicos et alienigenas defendere.*" On this law I have before made some observations. The purport of it seems to be, the imposing of an oath of confederacy, or association, for the defence of the king, and of all his territories and dignities both in and out of Great Britain. But it does not appear to *give* any thing; nor is there the least mention in it of the great alteration made in the tenures of lands, and the policy of the realm, by this king and his parliament, in rendering the estates of the English *hereditary fiefs to all perpetuity*, which is expressly taken notice of in the two other statutes, and called a *grant* or *concession*. The words of it are likewise very different from those of the usual oath of fealty. I am therefore obliged to differ with the learned writer abovementioned in his opinion, that this law introduced into England the Norman feudal tenures, and is referred to in the fifty-fifth and fifty-eighth laws before recited; nor can I agree with him, that the *liberi homines* mentioned in those laws were no others but the tenants in chief of the king.

Ibid. Whether this difference arose from any other statute, made by William the First after the two abovementioned, or from a narrow and unfavorable construction thereof by a subsequent usage, I cannot say.

There is much obscurity in this matter: but by the *Inquisitio Gheldi*, which is found among the

the Exeter manuscripts mentioned in a former note BOOK II.
 on Domesday-book, and no where else in the kingdom (being an account of the money levied for danegelt in the five western counties at the time when the survey was made by William the Conqueror), it appears, that among the demesne lands exempted from that tax were the lands of all the *servientes regis*, under which description are contained, not only those who held of him by knights-service, but *præpositi, camerarii, hostiarii, marecalli, coci, focarii, carpentarii, venatores, parcarii*.

In four of the western counties the exempted demesne amounted to one third; and in the fifth, viz. Somersetshire, to one fourth of the whole land.

P. 259. *However this may have been, it is declared most explicitly, by King Edward the First, in his confirmation of the charters, that the aids, free gifts, and other impositions, irregularly taken or levied by him or his ministers, before that time, for his wars or other necessities, should not be drawn into precedent because they might be found recorded on the rolls: and he therein grants to the nobility and commonality of the realm, that, for the future, he would not, for any necessity whatsoever, take any such aids or impositions, without the common assent of the whole kingdom, and to the common benefit thereof: with a reserve of the ancient aids and impositions due by custom.*

Nothing can be more express than this declaration. Nevertheless, in the fifty-first of Edward the Third, upon the parliament's renewing their claim to the king, *that in time to come the prelates, earls, barons, commons, citizens, and burgesses of his realm of England may not henceforth be* See Cotton's
Abridgement
of the Records
in the Tower,
p. 152.
Edw. III.

BOOK II. *charged, molested, nor grieve to make any common aid, or sustain any charge, unless it be by common assent of the prelates, dukes, lords, and barons, and other people of the commons of his realm of England, and that in full parliament;* his answer was, "that he is not at all willing to do it, *without great necessity, and for the defence of the realm, and where he may do it with reason.*" These savings, the last especially, set the whole loose. On this I would observe, that, although it was dangerous to allow any latitude of this nature in the raising of money without consent of parliament, yet there was also a danger, which might attend the restraint in cases of real and urgent necessity, or even where advantages of importance might be lost by waiting till the time when the parliament should be sitting, and the supply could be granted there in the usual forms. This seems to have been one cause of the too frequent violations of this great and acknowledged right of parliament, as well as a specious pretence for them on many occasions; especially under the Tudors, and the two first kings of the Stewart family: but the difficulty has been obviated by the expedient resorted to in latter times, of making provisions for such contingences by *vates of credit* in time of war, and even, on some occasions, in times of peace, when there appears to be cause for apprehending danger, or much inconvenience to the publick, from tying the government up by the usual restrictions. But great care ought to be taken, that this trust, which the parliament reposes in the government, should be *limited as to the sum*, and given under the obligation of being *subject to account*. Nor ought such votes to be ever past *in time of peace*, without a most apparent reason, upon some clear prospect of great benefit from enabling the government to make subsidiary treaties with
foreign

foreign powers during the recess of parliament, or other such weighty motive. Under these cautions, the use of *votes of credit and confidence* is a means of delivering that great security of our property and freedom, the ancient claim of our parliaments *that no aids or taxes should be levied without their assent*, from those objections of inconvenience and danger to the state, which many writers on the side of absolute monarchy have formerly brought against it with some shew of reason. See Barclay and others.

I cannot better end this note on this very important subject, than by transcribing some passages from that excellent treatise of Lord Chief Justice Fortescue on absolute and limited monarchy, which, next to the laws recited in the Bill of Rights, is one of the noblest monuments we have of the liberties enjoyed by our ancestors. In his third chapter he says, that, “on account of the
 “ great wars which the English made in France, the
 “ three estates durst not assemble. And then, for
 “ that cause, and for great necessity which the
 “ French king had of goods for the defence of his
 “ kingdom, he took upon him to set *tailles* and
 “ other impositions upon the commons *without the*
 “ *assent of the three estates*; but yet he would not
 “ set any such charges, nor has set, upon the
 “ nobles, for fear of rebellion. And because the
 “ commons, though they grudged, have not re-
 “ belled, or be hardy to rebel, the French kings
 “ have yearly since set such charge upon them,
 “ and so augmented the same charges, *that the*
 “ *said commons be so impoverished and destroyed as*
 “ *they can scarce live*. They drink water, they
 “ eat apples, with bread very brown made of
 “ rye. They eat no flesh, but, very rarely, a little
 “ bacon, or of the entrails or heads of beasts slain

BOOK II. " for the nobles and merchants of the land. They
 " wear no woollen, but a poor coat under their
 " outermost garment made of broad canvass, and
 " call it a frock. Their hose are of like canvass,
 " and reach not above their knee; wherefore they
 " be gartered, and their thighs bare. They can
 " live no otherwise: for some of them, that were
 " wont to pay to their lords for their tenements,
 " which they take by the year, a crown of gold,
 " pay now to the king, over and above that
 " crown, five crowns. From whence they are
 " prest by necessity so to watch, labour, and grub
 " in the ground for their sustenance, that their na-
 " ture is much wasted, and the kind of them
 " brought to nought. They go crooked, and are
 " feeble, not able to fight, or to defend the realm;
 " nor have they money to buy them weapons
 " withall: but verily *they live in the most extreme*
 " *poverty and misery*; and yet they dwell in one of
 " the most fertile realms of the world: through
 " which it happens that the French king has not
 " men of his own realm able to defend it, except
 " his nobles, who endure no such impositions, and
 " have therefore strong bodies. By which cause
 " the said king is compelled to make his armies
 " and retainers, for the defence of his land, of
 " *strangers*, as Scots, Spaniards, Arragonese, Ger-
 " mans, and other nations; or else all his ene-
 " mies might over-run him. For he hath no de-
 " fence of his own, except his castles and fortresses.
 " *Lo! this is the fruit of his Jus regale*. If the
 " realm of England, which is an island, and there-
 " fore may not easily get succours of other lands, were
 " ruled under such a law, and under such a prince,
 " it would be then a prey to all other nations, that
 " would conquer, rob, and devour it."

It will not be necessary to enter here into any BOOK II
disquisition, whether the time *when*, and the manner *how*, the kings of France obtained an absolute monarchy, called here *Jus regale*, with a power of taxing their people *without the assent of the three estates*, be rightly fixed by this writer. It is sufficient to observe, that as he had lived many years in France, where he took refuge with the son of King Henry the Sixth, his pupil, we cannot doubt the truth of the description he gives of the poverty and misery of the people there from such arbitrary impositions. And with relation to the peasants and tillers of the soil, much of it still continues. He thus proceeds in his comparison of the kingdoms of England and France: "But, blessed be God, *this land is ruled under a better law, and therefore the people thereof be not in such penury, nor thereby hurt in their persons; but they be wealthy, and have all things necessary to the sustenance of nature. Wherefore they be mighty, and able to resist the adversaries of the realm, and to beat other realms that do, or would do, them wrong. Lo! this is the fruit of Jus politicum et regale, under which we live.* Somewhat now I have shewn you of the fruits of both laws, *ut ex fructibus eorum cognoscatis eos.*" Let me now ask, is not this a most remarkable testimony of the freedom of the English government, and the easy state of the commonalty, under our ancient constitution, even after the great disturbance which the utmost rage of civil war had occasioned in the kingdom? Will it be said, against an evidence so clear and express, that, till within this last century, the charters granted by our kings were of no real value or benefit to the people? Our liberty has certainly been confirmed, improved, and strengthened, and a better form has been given to it, during that period and part of
the

BOOK II. the preceding century; but it stands on the old foundations; and a great portion of its vigour is drawn from that root, which made it flourish in the times that Fortescue here describes; a root fixed in the English soil, and carefully cultivated, many ages before. I will go on to recite some other remarkable passages from this admirable work, which I wish were read and got by heart by every young English gentleman, before he travels into France. The author says, in his 4th chapter, "Seeing that our king reigneth over us by laws more favorable and good to us, than be the laws by which the French king ruleth his people, it is reason we be to him more good and more profitable than be the subjects of the French king unto him, which it would seem that we be not, *considering that his subjects yield to him more in one year, than we do to our sovereign Lord in two years, although they do it against their wills.*"

I have observed in another place that this defect of revenue has been since supplied to the crown by the settlement of a proper and ample *civil list* on our kings for the maintenance of the honor and dignity of the crown; and by annual grants for publick services so bountifully given, according to the exigences of government, that no absolute monarchy was ever supplied by its subjects, in proportion to their numbers, with an equal liberality.

The same author goes on thus: "Nevertheless, when it is considered, that a king's office consists in two things; to defend his realm against its enemies without; another, to defend his people against wrong-doers within, which the French doth not; *since he oppresseth them more himself than would have done all the wrong-doers*" of

“ of the realm, though they had no king: and
 “ since it is a sin to give no meat, drink, cloath-
 “ ing, or other alms, to them that have need,
 “ as shall be declared in the day of doom, how
 “ much a greater sin is it, to take from the poor
 “ man his meat, his drink, his cloathing, and all that
 “ he hath need of? Which verily doth the French
 “ king to many thousands of his subjects; as it is open-
 “ ly before declared. Which thing, though it be
 “ coloured *per jus regale*, yet it is *tyranny*: where-
 “ fore, albeit that the French king’s revenues be
 “ by such means much greater than be the reve-
 “ nues which the king our sovereign lord hath of
 “ us, yet they be not righteously taken, and the
 “ might of his realm is near destroyed thereby.
 “ By which consideration I would not that the king’s
 “ revenues of this realm were made great by any such
 “ means.”

And in his tenth chapter he mentions the im-
 positions taken by the duke of Burgundy upon every
 ox, every sheep, and upon other things sold, and
 also upon every vessel of wine, every barrel of beer,
 and other victuals sold in his dominions; “ which
 “ (says he) is no little revenue to him yearly; but yet
 “ he doth it maugre the people; which God forbid
 “ that the king our sovereign Lord should do upon his
 “ people, without their grants and assents. Never-
 “ theless, with their assents such manner of subsidy,
 “ if there could not be found a better means of
 “ increasing the king’s revenue, were not unreason-
 “ able. For therein, and in the gabel of salt, every
 “ man shall bear an equal charge. But yet I would
 “ not that such a new custom and charge were put
 “ upon the people, in our sovereign Lord’s days;
 “ with which his progenitors charged them never, if
 “ a better and more convenient way could be
 “ found.”

I need

BOOK II.

I need not observe that such taxes have in *some degree* been since laid. But the chief inference I would draw from these citations is this. If the learned judge who wrote thus, concerning the laws and constitution of England, under King Edward the Fourth, could have revived in the reign of Charles the First, what opinion would he have given upon the arbitrary impositions laid by that prince on his people *without their grants or assents*? Would he have said, *it was the ancient prerogative of the crown to raise money in that manner*? Would he have thought it agreeable either to *policy* or to *law*? Would he have told that unhappy prince, as some of his bishops told him, *that it was the duty of his people to submit to such impositions without resistance*; that his *jus regale* was inherent in him *jure divino*, and uncontrollable by any human power? Or would he have satisfied his conscience, as Dr. Brady and others tried to satisfy the consciences of his sons Charles and James, by persuading him that the privileges, on which the commons insisted, had been extorted from King John by rebellious barons, and did not extend to the commons, who in those days *were all slaves*?

Lastly I ask, are we to take our ideas of the rights and liberties of our ancestors from the connected series of their laws, and from the writings of the greatest and most approved lawyers, especially such as treat of government and the constitution of England; or from irregular acts of power, and inconsiderate or corrupt proceedings in parliaments or courts of justice, under particular reigns, and at particular times?

P. 264. *The religious notions of the times, and laws founded thereupon, forbidding usury to all Christians, and not distinguishing between that and a reasonable*

reasonable interest for money upon loans; without which neither commerce could well be carried on, nor the sudden exigences of the government, or of particular persons, be supplied; the Jews were necessary as money-lenders; &c. BOOK II.

The Jews understand, that by the laws of Moses they are forbidden to lend money to one another upon interest; but may practise usury to any height in their dealings with foreigners, without offence against that law.

P. 275. *Peter of Blois, at that time archdeacon of London, in a letter to the pope, reckons all the inhabitants of that city at no more than forty thousand.*

On revising and considering this passage, I suspect there is an error of the press or the manuscripts, in all the copies I have seen; and that, instead of *quadraginta millia*, we should read *quadringenta*; the former number of inhabitants being not in proportion to the bigness of the city, as described by the same writer, nor to what we know, from the testimonies of many others in that age, of its importance, dignity, and power, in the kingdom. If any authority for this correction of the text can be found in the manuscripts, I should make no doubt of preferring it to the reading I have followed, and putting *four hundred thousand*, instead of *forty thousand*.

P. 276. *Yet there were some of stone, and a handsome architecture, according to the taste of those days, &c.*

The abbot of Peterborough mentions a *stone house* (*domum lapideam*) of a rich citizen in London. It can therefore hardly be doubted that the houses of the nobility, built in that city or its suburbs, which Fitzstephen speaks of as magnificent, were likewise of stone.

V. Benedict.
abbat. v. i.
p. 197. sub
ann. 1177.

BOOK II. P. 282. *We have a charter of King Henry the Third in the English of that time, which, as it is curious to see how near the language approached to that of the present century, I have given, with a translation of it into modern English, in the Appendix to this volume, &c.*

See Camden's
Remains con-
cerning Bri-
tain, p. 24.

Mr. Camden tells us, that, in the time of King Henry the Second, he finds this *rime* sent from Rome by Pope Adrian, an Englishman, to be taught to the people:

Ure fadyr in heaven rich,
Thy name be halyed ever lich:
Thou bring us thy michell blisse,
Als hit in heaven y-doe,
Evar in yearth beene it also:
That holy bread that lasteth ay,
Thou fend it ous this ilke day.
Forgive ous all that we have don,
As we forgivet uch other mon:
Ne let ous fall into no founding,
Ac shield us fro the fowle thing.
Amen.

But this learned author does not say on what authority he supposes that these verses were as ancient as the time of pope Adrian. They seem to me much more modern, and nearer to the present English, than the charter of Henry the Third, which I have given as a specimen of the language in his time.

P. 283. *Indeed those, who in that age were best qualified to be authors, all wrote in Latin.*

V. J. Lelandi
Comus de scr.
Britan. c. 217.

Among these are some poets, of whom by far the most eminent was Joseph of Exeter, called Josephus Iscanus. In his youth, he wrote only some epigrams and love-verses, none of which are preserved: but in his riper age his genius took much higher flights,

above the pitch of any contemporary poets. **For** BOOK II.
 he wrote two epic poems in Latin heroic verse: the first on the subject of the Trojan war, in five books, which he dedicated to Thomas Baldwin archbishop of Canterbury, and of which Leland and Camden have given us some specimens, that seem indeed much more elegant, and nearer the spirit of true Latin poetry, than any other compositions of our countrymen in those times. I will transcribe a few lines, to give my reader a taste of his style and manner. He says to the archbishop his patron, who was going to the holy war,

“ Te sacræ assument acies, divinaque bella.

“ Tunc dignum majore tuba, tunc pectore toto

“ Nitar, et immensum mecum spargere per orbem.

And afterwards,

“ Altera sacræ

“ Tendo fila lyræ; plectro majore canenda

“ Antiochæ me bella vocant: nunc dicere votum est

“ Christicolæ acies, et nostræ signa *Sibyllæ*.

“ Quæ virtus, quæ dona crucis: nec fundit anhela

“ Hos mihi Cyrrha pedes; animi fidentis hiatum

“ Celsior e cælo venit impleturus Apollo.

“ Tu quoque, magne pater, nostri fiducia cœpti

“ Altera, et in pelago pandens mihi vela secundo,

“ Hoc tibi ludit opus: succedit serior ætas,

“ Seria succedunt aures meritura pudicas;

“ Si tuus in nostros candor consenserit ausus,

“ Non metuam culicis stimulos, fucique susurrum.”

The promise he makes in these verses, of another poem on the subject of the crusade, he fulfilled, and published that poem after the death of Baldwin, but in what year is uncertain. Leland only saw a fragment of it, in which the writer takes occasion to praise his native city Exeter, “ *tam exquisitè* (says Leland)

V. Leland, ut
 suprà, c. 197.
 de T. Baldwi-
 no.

BOOK II. "Leland) *ut facile credas Musas ipsas, cum pro-*

fluenti Helicone toto, vati ea concinenti præsentissimas

adfuiffe." It must however be observed, that this

author is too apt to be lavish of his praise, and writes

always much more as a panegyrist than a critic.

Joseph of Exeter lived to a very old age, and made

a new edition of his poem *de bello Trojano* in the

reign of Henry the Third. The matter of it is

taken, not from Homer, but Dares Phrygius, whose

fabulous history was much in vogue at that time.

From thence Mr. Camden has cited the following

verses, to shew the talent of this writer for poetical

description :

"Haud procul incumbens intercurrentibus arvis

"Idæus confurgit apex, vetus incola montis

"Sylva viret, vernat abies procera, cæpressus

"Flebilis, interpretes laurus, vaga pinus, oliva

"Concilians, cornus vehatrix, fraxinus audax,

"Stat comitis patiens ulmus, nunquamque se-

"nescens

"Cantatrix buxus; paulo proclivius arvum

"Ebria vitis habet, non dedignata latere

"Cancricolam poscit Phœbum, vicinus aristas

"Prægnantes fœcundat ager, non plura Falernus

"Vina bibit, non tot pascit Campania messes."

But in an edition I have seen of this poem printed

at Basil, with Homer's Iliad and Odyssey, the first

line run thus :

"Haud procul incumbens urbi, mediantibus arvis,

"Idæus confurgit apex, &c."

To these specimens I will add the description of
Ajax Telamon fighting against the Trojans.

"Parte furens aliâ cognatos impiger hostes

"Turbabat Telamone fatus, septena coruscans

"Terga

See Camden's
Remains,
p. 313.

- "Terga boum : hasta viro quercus jaculabilis uni
 "Unam passa manum : non ferrea futa superbum
 "Velavere latus ; five has bellare proterva
 "Non tulit ira moras, seu lato pectoris orbe
 "Se totum latuisse ratus, sic sævit inermis,
 "Sic premit armatos ; maturat fata cadentum
 "Terror, et ignavis mors est vidisse furemtem."

Though the Latin in these and other parts of this work is not quite pure and grammatical, yet it is more so than in most other verses of that age ; and in the spirit of poetry and harmony of numbers it far excells the Philippiad of Guillaume le Breton, a contemporary epic poem.

In a much lower strain, but with great vivacity and facetious good-humour, did the jovial bard, Walter de Mapes archdeacon of Oxford, who may be called the Anacreon of the eleventh century, sing his Leonine rimes in praise of good drinking ; a specimen of which I will here transcribe :

See Camden's
Remains.

- "Mihi est propositum in tabernâ mori ;
 "Vinum sit appositum morientis ori :
 "Ut dicant, cum venerint, angelorum chori,
 "Deus sit propitius huic potatori.
 "Poculis accenditur animi lucerna,
 "Cor imbutum nectare volat ad superna,
 "Mihi sapit dulcius vinum in taberna,
 "Quam quod aquâ miscuit præsulis pincerna.
 "Suum cuique proprium dat natura munus ;
 "Ego nunquam potui scribere jejunus :
 "Me jejunum vincere posset puer unus :
 "Sitim et jejunium odi tanquam funus.
 "Tales versus facio quale vinum bibo :
 "Non possum scribere nisi sumpto cibo :
 "Nihil valet penitus quod jejunus scribo :
 "Nalonem post calices carmine præibo.

"Mihi nunquam spiritus prophetiæ datur,

"Nisi cum fuerit venter bene satur:

"Cum in arce cerebri Bacchus dominatur,

"In me Phœbus irruit, ac miranda fatur."

P. 287. *But though much was stolen by this author, he added enough of his own, to give him a considerable rank, in the opinion of Sir H. Saville and Mr. Selden, among the many historians who flourished in the eleventh and twelfth centuries.*

Of these historians, besides those mentioned in the text, Gervase of Canterbury and Diceto are frequently referred to in the course of this work. They are large in their account of church affairs, and not useleis to a compiler of the history of those times in their accounts of other matters. Brompton's chronicle is in many places a transcript from Gervase and Giraldus Cambrensis; but he has added copies of some records and ancient laws, which are not to be found in those authors, and make his work of some value.

P. 290. *Some of his letters are animated with a spirit of liberty, which would have done honor to a Greek or Roman republican; &c.*

It may be worth while to give the reader a specimen of this spirit, from one of his letters to the bishop of Worcester, who was son to the great earl of Gloucester, often mentioned in this work. His words are these: "*Filium alloquor illustriſſi comitis, qui in regum catalogo dignus fuerat numerari, nisi quia magnificæ virtutis titulo meruit, ut, in libertatis culmine constitutus, reges viderit in ordine secundo.*" The sense of which may be thus expressed in an English translation: "I speak to the son of that illustrious Earl, who would have been worthy to be reckoned in the catalogue of
" kings,

“kings, if his virtue and magnanimity had not BOOK II.
 “raised him so high, that, *being placed at the head*
 “*of a free people, and their leader in defending the*
 “*cause of liberty, he saw kings in a rank below his*
 “*own.*” V. epist. S. T. C. e cod. Vatican. lib. ii.
 epist. 96.

P. 299. *He says, the houses, on such occasions, were strewed with flowers, and the jovial company drank wine out of gilded horns, &c.*

Agreeably to this description, we are also told by Fitstephen, that Becket, when he was chancellor, ordered his hall to be strewed every day in the winter with fresh straw or hay, and in summer with rushes or green leaves fresh gathered, that the multitude of knights, which the benches could not contain, might sit on the floor, thus rendered clean and gay, without dirtying their fine garments. “Jusserat quaque die novo stramine vel fœno in “hieme, novis scirpis vel frondibus virentibus in “æstate, sterni hospitium suum; ut militum multitudinem, quam scamna capere non poterant, “area munda et læta reciperet; ne vestes eorum “pretiosæ, vel pulchræ eorum camisiæ, ex aræ “sorde maculam contraherent.” It may be worth remarking, that still, at the coronation of our kings, Westminster-hall is strewed with herbs.

But even in Becket's days this rustic simplicity was mixed with great magnificence in gold and silver plate; for the author above cited goes on to say, that, “*vassi aureis et argenteis domus ejus reni-* “*debat.*” I will add, that I have seen, in the treasury of St. Bertin's church at St. Omers, a silver vessel of that age, the form and workmanship of which are as elegant as any now made.

BOOK II. P. 303. *But it appears, that, in the times of Henry the Second, the whole gentry of England, having adopted the fashions of the Normans, were as magnificent in their dress as their fortunes could bear.*

See Camden's
Remains, p.
194.

Mr. Camden says, that in this age the use of silk made by silk-worms was brought out of Greece into Sicily, and thence into other parts of Christendom. He likewise mentions a costly stuff, called in Latin *aurifrisum*, which was worn in England at this time. With regard to the mode of dress the same learned antiquary observes, that king Henry the Second brought in the short mantle, and was therefore surnamed *Court-mantel*. Yet by other proofs it appears, that long flowing gowns, after the fashion of the East, continued to be worn by the nobility and gentry in his time.

A P P E N D I X

TO THE

THIRD VOLUME

OF THE

History of the Life of King HENRY
the Second.

Nº I.

BOOK II.

Judicia Civitatis Londoniæ, p. 71. *Wilkins Leges* This refers to
vol. iii. p. 74.
Anglo-Saxonica.

ET si mercator tamen sit, qui ter trans altum
mare per facultates proprias abeat, ille postea
jure Thani sit dignus.

Nº II.

This refers to
vol. iii. p. 265.

Madox's History of the Exchequer, p. 174. ch. vii.
note e.

JOHANNES Dei gratia &c. Sciatis nos concessisse omnibus Judæis Angliæ et Normanniæ libere et honorifice habere residentiam in terra nostra,

I i 3

et

BOOK II. et omnia illa de nobis tenenda quæ tenuerunt de rege H. avo patris nostri, et omnia illa quæ modo rationabiliter tenent, in terris, feodis, et vadiis, et akaris suis, et quod habeant omnes libertates et consuetudines suas, sicut eas habuerunt tempore prædicti regis H. avi patris nostri, melius et quietius et *bonorabilius*. Et si querela orta fuerit inter Christianum et Judæum, ille qui alium appellaverit, ad querelam suam dirationandam habeat testes, scilicet legitimum Christianum et legitimum Judæum. Et si Judæus de querela sua breve habuerit, breve suum erit ei testis. Et si Christianus habuerit querelam adversus Judæum, sit judicata per pares Judæi. Et cum Judæus obierit, non detineatur corpus suum super terram, sed habeat hæres suus pecuniam suam et debita sua, ita quod inde non disturbetur, si habuerit hæredem qui pro ipso respondeat, et rectum faciat de debitis suis et de forisfacto suo. Et liceat Judæis omnia quæ eis apportata fuerint sine occasione accipere et emere, exceptis illis quæ de ecclesia sunt et panno sanguinolento. Et si Judæus ab aliquo appellatus fuerit sine teste, de illo apellatu erit quietus solo sacramento suo super librum suum. Et de appellatu illarum rerum quæ ad coronam nostram pertinent similiter quietus erit solo sacramento suo super rotulum suum. Et si inter Christianum et Judæum fuerit dissensio de accommodatione alicujus pecuniæ, Judæus probabit catallum suum et Christianus lucrum. Et liceat Judæo quiete vendere vadium suum, postquam certus erit eum illud unum annum integrum et unum diem tenuisse. Et Judæi non intrabunt in placitum nisi coram nobis, vel coram illis qui turres nostras custodierint, in quorum ballivis Judæi manserint. Et ubicunque Judæi fuerint, liceat eis ire quocunque voluerint cum omnibus

nibus catallis eorum sicut res nostræ propriæ, et nulli liceat eos retinere neque hoc eis prohibere. Et præcipimus quod ipsi quieti sint per totam Angliam et Normanniam de omnibus consuetudinibus, et theloniis, et modiatione vini, sicut nostrum proprium catallum. Et mandavimus vobis et præcipimus, quod eos custodiat, et defendatis, et manuteneatis. Et prohibemus ne quis contra cartam istam de hiis supradictis eos in placitum ponat, super forisfacturam nostram, *sicut carta regis H. patris nostri rationabiliter testatur.* Testibus Gaufrido filio Petri Comite Essexiæ, Willielmo Marefcallo Comite de Penbroc, Henrico de Bohun Comite de Hereford, Roberto de Turnham, Willielmo Briwer, &c. Datum per manum S. Wellensis Archidiaconi apud Merleberg, decimo die Aprilis, anno regni nostri secundo.

Rot. Cart. 2 Job. n. 49. titulo Carta Judæorum Angliæ.

Nº III.

Charta Regis Willielmi Conquest. de legibus boni Regis Edwardi Conf. stabiliendis; facta in vit. ante ann. ejus 4. Domini nostri 1070. precibus Willielmi London. Episcopi, qui dicto anno obiit.

This and the two following charters of Hen. I. and Hen. II. are referred to in vol. iii. p. 272.

WILLIELMUS Rex salutatur Willielmum Episcopum, et Godfridum Portegresium, et omnem Burghware, infra London. Franc. et Angl. amicabiliter. *Et vobis notum facio, quod ego volo quod vos sitis omni lege illâ digni quâ fuistis Edwardi diebus regis. Et volo quod omnis puer sit patris sui*

BOOK II. *hæres post diem patris sui* *. Et ego nolo pati, quod aliquis homo aliquam injuriam vobis inferat. Deus vos salvet.

N° IV.

Wilkins Leges Anglo-Saxon. p. 235.

HENRICUS Dei gratia rex Angliæ, Archiepiscopo Cantuariæ, et Episcopis, et Abbatibus, et Comitibus, et Baronibus, et Justiciariis, et Vicecomitibus, et omnibus fidelibus suis Francis et Anglicis totius Angliæ, Salutem. Sciatis me concessisse civibus meis *London* tenend' *Middlesex* ad firmam pro ccc. libr' ad compotum ipsius et hæredibus suis, de me et hæredibus meis, ita quod ipsi cives ponent vicecom' qualem voluerint de seipsis et justiciar' qualem voluerint de seipsis ad custodiend' placita coronæ meæ et eadem placitanda, et nullus alius erit justiciarius super ipsos homines *London*, et cives non placitabunt extra muros civitatis pro nullo placito, et sint quieti de *eschot* et de *danegildo* et de *murdro*, et nullus eorum faciat bellum †. Et si quis

* By the clauses marked in Italicks I understand that the benefit of all the laws of King Edward, or those they enjoyed in his time, was confirmed to the magistrates and citizens of London, and the right of inheritance to their children, so as not to be forfeited by any offences of the fathers. They are strangely translated by Dr. Brady.

† This means exemption from the Norman trial by *Duel*.

N. B. I have corrected some words of the transcript of this Charter, as it is given by Wilkins in his Anglo Saxon Laws, from the various readings in his notes; and in some places I have altered the stops which he has put to it, or inserted a copulative, in order to make a better and clearer sense. Some passages seem still to want a further correction.

civium

civium de placitis coronæ implacitatus fuerit per sacramentum quod judicatum fuerit in civitate, se disrationet homo *London*, et intra muros civitatis nullus hospitetur, neque de mea familia, neque de alia, vi alicui hospitium liberetur. Et omnes homines *London* sint quieti et liberi, et omnes res eorum per totam Angliam et per portus maris de *thelonio* et *passagio* et *lastagio* (*lastagio*), et omnibus aliis consuetudinibus; et ecclesiæ et barones, et cives teneant et habeant bene et in pace focnas suas cum omnibus consuetudinibus, ita quod hospites, qui in foccis suis hospitantur, non dent consuetudines suas, nisi illi cujus focca fuerit vel ministro suo quem ibi sibi posuerit. Et homo *Londoniarum* non judicetur in misericordia pecuniæ, nisi in sua *Were*, scilicet ad c solid. Dico de placito quod ad pecuniam pertineat. Et amplius non sit *miskenniga* in *bustenge*, neque in *folkesmote*, neque in aliis placitis intra civitatem. Et *busting* fe-deat semel in hebdomada, videlicet, die Lunæ: et terras suas, et *wardemotum*, et debita civibus meis habere faciam intra civitatem; et extra. Et de terris de quibus ad me clamaverint rectum eis tenebo lege civitatis. Et si quis *thelonium* vel consuetudinem à civibus *London* ceperit, cives *London* capiant de burgo, vel de villa, ubi *thelonium* vel consuetudo capta fuit, quantum homo *London* pro *thelonio* dedit, et proinde de dampno ceperit. Et omnes debitores qui civibus debita debent, eis reddant, vel in *London* se disrationent quod non debent. Quod si reddere noluerint, neque ad disrationandum venire, tunc, cives quibus debita sua debent capiant intra civitatem namia sua, vel de comitatu in quo manet qui debitum debet. Et cives habeant fugationes suas ad fugandum, sicut melius et plenius habuerunt antecessores eorum scilicet *Ciltre*, et *Middlesex*, et *Surcie*. Teste Episcopo Winton',
Rob.

BOOK II. Rob. fil' Richer, et Hug. Bigot, et Alver' de
Toneis et Willielmo Albini, et Huberto Regis Cam-
merar' et Willielmo de Montfichet, et Hagulfo de
Tani, et Joh' Delet, et Rob. fil. Siwa.
Dat. apud Westm'.

Nº V.

Ibid. p. 319.

*Carta Libertatum Regis Henrici secundi, Londonien-
sibus concessarum.*

HENRICUS Dei gratia &c. Archiepiscopis,
Episcopis, Abbatibus, Baronibus, Justiciis,
Vicecomitibus, Ministris, et ompibus fidelibus suis,
Francis et Anglis, Salutem.

Sciatis, me confirmasse civibus meis *London*,
quod nullus eorum placitet extra muros civitatis
London. de ullo placito præter placita de tenuris
exterioribus, exceptis meis monetariis, et ministris
meis.

Concessi etiam eis quietantiam murdri infra urbem
et portfozna : et quod nullus faciet bellum : et quod
de placitis ad coronam se possunt disfrationare se-
cundum antiquam consuetudinem civitatis : et quod
intra muros nemo capiat hospitium per vim, vel per
liberationem marescalli.

Hoc etiam eis concessi quod omnes cives *Lon-
doniarum* sint quieti de thelonio et lastagio per to-
tam Angliam, et per portum maris : et quod nul-
lus de materia pecuniæ judicetur, nisi secundum
legem civitatis, quam habuerunt tempore Henrici
avi mei : et quod in civitate in nullo placito sit
miskeninga : et quod *bustingus* semel tantum in heb-
domado teneatur : et quod terras suas, et tenuras,
et vadimonia, et debita omnia juste habeant, qui-
cunque

cunque eis debeat; et de terris suis et tenuris, quæ BOOK II.
infra urbem sunt, rectum eis teneatur secundum
legem civitatis, et de omnibus debitis suis quæ ac-
commodata fuerint apud *London.* et de vadimoniis
ibidem factis, placita apud *London.* teneantur. Et
si quis in tota Anglia thelonium vel consuetudinem
ab *London.* ceperit, postquam ipse a recto defecerit,
vicecomes *London.* namium inde apud *London.*
capiat. Concedo etiam eis, quod habeant fuga-
tiones suas, ubicunque eas habuerunt tempore regis
Henrici, avi mei.

Insuper etiam ad emendationem civitatis eis con-
cessi, quod sint quieti de Brud toll, et de Childwyte,
et de Aarasgive, et de Scotale; ita quod vicecomes
meus *London.* vel aliquis alius Ballivus Scotale non
faciat.

Has prædictas consuetudines eis concedo, et om-
nes alias libertates quas habuerunt tempore Henrici
regis, avi mei.

Quare volo et firmiter præcipio, quod ipsi et
hæredes eorum hæc prædicta omnia hæreditarie
habeant et teneant de me et hæredibus meis.
Hiis testibus, Archiepiscopo Cantuariæ, Episcopo
London.

N^o VI.

Madox's History of the Exchequer, p. 276. ch. xi.
note g.

This is refer-
red to in
p. 109. of
this volume.

JOHANNES Dei gratia &c. Sciatis nos con-
cessisse, et præsentî carta confirmasse, burgen-
sibus nostris de Dunewichge, quod burgum de
Dunewichge sit liberum burgum nostrum; et ha-
beat soccam, et faccam, et toll, et theam, et in-
fangenthes; et quod ipsi per totam terram nostram
quieti sint de thelonio, et lestagio, et passagio, et
pontagio,

BOOK II.

pontagio, et stallagio, et de leue, et de danegeld, et de ewagio, de wrec et legan, et de omnibus aliis consuetudinibus; salva libertate civitatis Londoniæ; et quod ipsi rectam et solitam firmam suam per manum suam reddant ad scaccarium nostrum; et quod nullam sectam faciant comitatum vel hundredorum, nisi coram iusticiariis nostris; et cum summoniti fuerint esse coram iusticiariis, mitant pro se xii legales homines de burgo suo, qui sint pro eis omnibus; et si forte ameriari debuerint, per sex probos homines de burgo suo et per sex probos homines extra burgum amerientur. Concessimus etiam eis, quod filios et filias suas possint libere ubi voluerint in terra nostra maritare, et viduas similiter per consilium amicorum suorum; et perquisitiones suas de terris et edificiis in villa sua possint dare aut vendere, aut facere inde quod voluerint et quando voluerint. Concessimus etiam eis Hansam et Gildam mercatoriam, *sicut habere consueverunt*. Quare volumus et firmiter præcipimus, quod prædicti burgenfes nostri prænominatas libertates et liberas consuetudines habeant et teneant, libere pacifice et integre, sine omni impedimento.

T. E. Elyensi Episcopo. Willielmo Marefcallo &c. Data per manum H. Cantuariensis Archiepiscopi, Cancellarii nostri, apud Rupem Aurivallis xxix die Junii anno r. n. primo.

Rot. Cart. 1 Joh. p. 2. n. 164.

Nº VII.

This is referred to in
vol. iii. p. 282.
See also vol. i.
p. 371, 372.

Royal 4. l. xi. Master Wace writes thus concerning the Fleet of William the Conqueror. Fol. 17. b.

NE vos voil mei metre en letre,
Ne io ne men voil entremetre:
Quels barones et quanz chevaliers
Quanz vavasors et quanz foldeiers

Out

Out li duc en sa compaignie,
 Quant il out prist tout son navie.
 Mais io oi dire à mon pere,
 Bien men souvient, mais vaslet ere,
 Que sept cenx nes, quatre moins, furent
 Quant de Saint Valeri s'esmurent,
 Que nès, que batels, que esqueis,
 A porter armes et herneis.
 Et io ai en escrit trové,
 (Ne fals dire s'est verité:)
 Que il y ont treis mel nès
 Qui portèrent voiles et tres.
 A tantez nès pout lon savoir:
 Que mult i pout grant gent avoir.

Speaking of Taillefer, he says,

Devant le duc aloit chantant
 De Karlemaigne, et de Rollant,
 D'Olivier, et del vassals
 Qui moururent es Roncevals.

N° VIII.

This refers to
 vol. iii. p. 282.

*A charter of King Henry the Third, in the old
 English of that Time, enforcing the late Provisions
 of Oxon.*

Rot. Pat. 43 H. III. m. 15. n° 40.

HENRY thurg Godes fukome King on Engle-
 nelloande Lhoauerd on Yrloand Duk on
 Normand. on Aquitain and Eorl on Anjou. send
 I, greting to alle hise holde ilærde and ilewede on
 Huntindonnfschiere; thæt witen ge wel, alle thæt
 I we

BOOK II.

we willen and unnen, that ure rædesmen alle other the moare del of heom, thæt beoth ichosen thurg us and thurg thæt *Loandes Folk*, on ure Kuneriche habbeth idon, and schullen don in the worthnes of Gode, and ure treowthe for the freme of the Loande, thurg the besigte of than to foren iseide rædesmen beo stedefæst and ilestinde in alle thinge abutan ænde, and the heaten alle ure treowe in the treowthe thet heo us ogen, that heo stede-festliche healden and weren to healden and to swerien the isetnesses thæt beon makede and beon to makien thurg than to foren iseide rædesmen, other thurg the moare dæl of heom alswo; alse hit is beforen iseid. And thæt æhcother helpe thæt for to done bitham ilche other agenes alle men [*paucula quedam hic deesse videntur, hæc scilicet aut similia*: in alle thinge thæt] ogt for do done and soangen. And noan ne mine of Loande ne of egetewher thurg this besigte muge beon ilet other iwerfed on oniewise. And gif oni ether onie cumen her ongenes we willen and heaten, thæt alle ure treowe heom healden deadlichstan. And for thæt we willen thet this beo stedefæst and lestinde; we senden gew this Writ open iseigned with ure Seel to halden amanges geæ ine Hord. Witnes us seluen æt Lundæn-thane egtetenth day on the Monthe of Octobr, in the two and fowertigthe geare of ure crunninge. And thir wes idon ætforen ure isworen rædesmen, Bonifac. Archebischop on Kanterbur. Walter of Cantelop Bischop of Wirecheester, Sim. of Montfort. Eorle of Leichestre, Rich. of Clare Eorl on Glocheester and on Hartford; Rogor Bigod Eorl of Northfolk and Marescal on Engleloand, Perres of Sauueye, Wil on Fort Eorl on Aubem, John de Plesse Eorl on Warwick, Joh. Gefferets-sune, Perres of Muntfort, Rich. of Grey, Rog. of Mortemer,

Mortemer, Iames of Aldithel, and ætforen othre BOOK II.
moge.

AND all on tho ilche worden is isend in to a-
richte othre Schire ouer al thare Kuneriche on Eng-
leneloande and ek inter Irelande.

*The same in Modern English, translated by Mr.
Somner.*

HENRY, by God's help, King of England,
Lord of Ireland, Duke of Normandy, and of
Aquitain, and Earl of Anjou, Greeting to all his
faithful Clerks and Laics of Huntingdonshire: This
know ye all well, that we Will * and Grant that * *Unnen.*
which our Counsellors all, or the most part of them
that be chosen by us, and the † People (or Com- † *Loandef-*
mons) of our Land, have done, and shall do, for *folke signifies*
the Honour of God, and of their Allegiance to us, *the Common*
for the ‡ Benefit (or Amendment) of the Land, by *People, called*
the Advice or Consideration of our foresaid Coun- *by us Folk at*
sellors, be stedfast and performed in every thing *this day. Vid.*
for ever. And we command all our Liege Peo- *Dr. Brady's*
ple in the Fealty that they owe us, that they sted- *Com. Hist.*
fastly hold, and swear to hold [or keep] and to *p. 68.*
defend [or maintain] the Statutes [or Provisions]
which be made, and shall be made, by those afore-
said Counsellors, or by the more part of them, al-
so as it is before said; and that they each other assist
the same to perform, according to that same Oath,
against all Men, both for to do, and cause to be
done: And none neither of my Land, neither
from elsewhere, may for this be hindered, or
damned in any wise: and if any man or woman
oppose them against, we Will and Command that
all our Liege People them hold for deadly Ene-
mies; and because we will that this be stedfast and
lasting,

BOOK II.

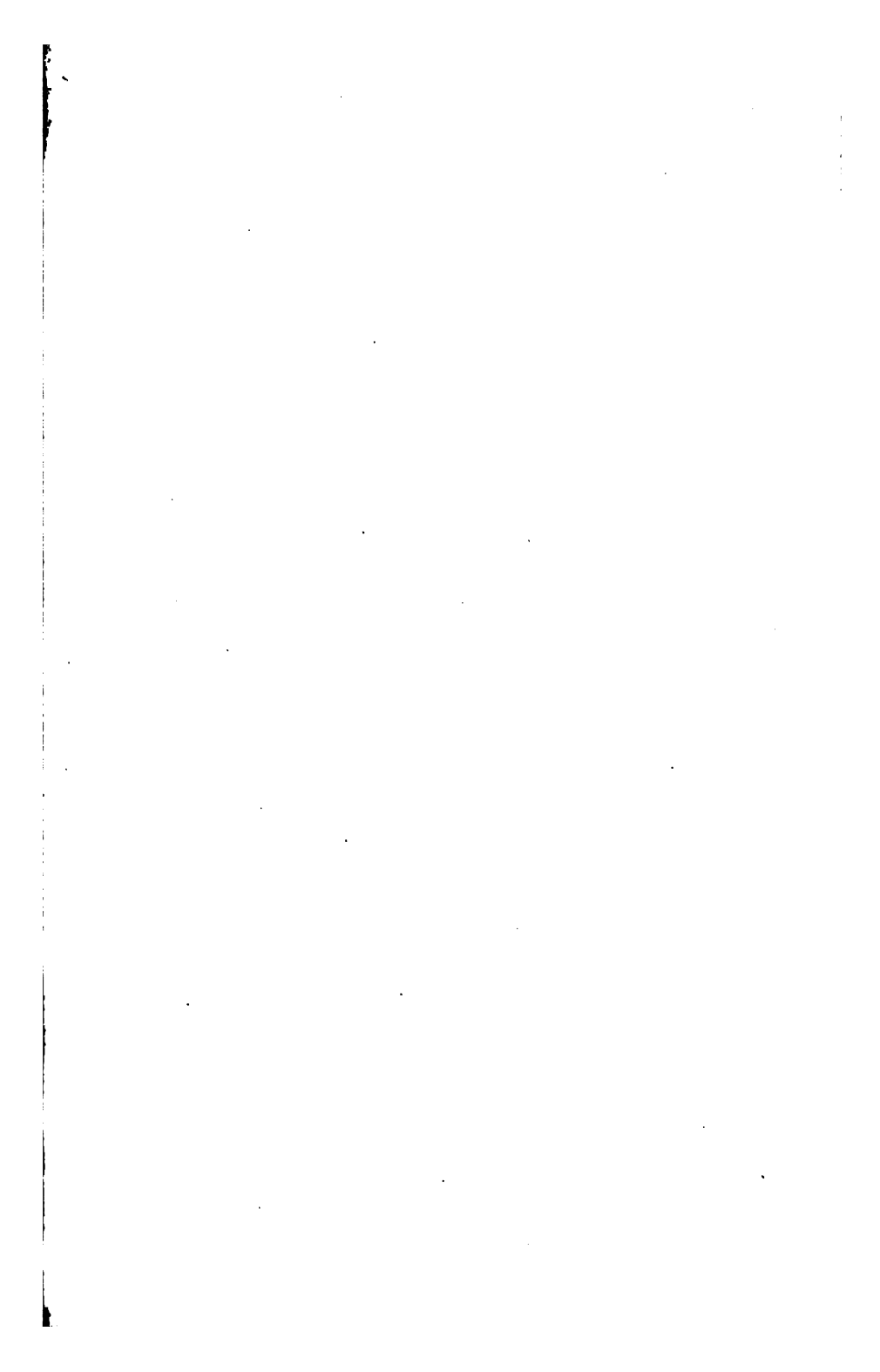
* Hord'.

lasting, we send you this Writ open, signed with our Seal to be kept amongst you in * Store; witness our self at *London* the 18th day of the Month of *October*, in the two and fortieth year of our Coronation; and this was done before our sworn Counsellors, *Boniface* Archbishop of *Canterbury*, *Walter* of *Cantelow* Bishop of *Worcester*, *Simon Montfort* Earl of *Leicester*, *Richard* of *Clare* Earl of *Glocester* and of *Hartford*, *Roger Bigod* Earl of *Norfolk* and *Mareschal* of *England*, *Peter* of *Savoy*, *William* of *Aubemarle*, *John* of *Plessez* Earl of *Warwick*, *John Gefferisson*, *Peter* of *Montfort*, *Richard* of *Grey*, *Roger* of *Mortimer*, *James* of *Alditbly*, and before others more.

AND all in these same words is sent into every other Shire over the Kingdom of *England*, and also into *Ireland*.

THE END OF THE THIRD VOLUME.

31





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